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THE
SOUTHWESTERN POLITICAL SCIENCE QUARTERLY

VOL. III SEPTEMBER, 1922 No. 2

THE COURTS OF THE SOUTHWEST[1]

C. PERRY PATTERSON
University of Texas

Their Organization

The general scheme of courts for the southwestern states consists of a differentiated set of courts, very loosely related in both jurisdiction and administration, beginning at the bottom with the justice of peace courts and ending at the top with supreme courts which exercise primarily appellate jurisdiction with the power to issue the usual mandatory and remedial writs necessary to enforce their jurisdiction. There are important differences in the organization of the intermediate courts. In Texas and Louisiana there are separate appellate courts subordinate to the supreme courts. In Texas and Oklahoma there are separate courts of criminal appeals, which are really supreme courts since they exercise final jurisdiction in criminal cases. There are no county courts in Louisiana and no district courts in Arizona and Arkansas. In New Mexico there is no county court of the usual type, but instead a probate court whose jurisdiction is coextant with the county. In Arizona, there is a superior court in each county, which is a sort of expanded county court or an abridged district court, but its territorial jurisdiction is restricted to the county. In Arkansas there are circuit courts instead of district courts. There are no

[1]Paper read at the Third Annual Meeting of the Southwestern Political Science Association, Norman, Oklahoma, March 25, 1922.

separate courts for proceedings in equity in any of the southwestern states.

Their Jurisdiction

The supreme courts of all the southwestern states are exclusively appellate courts so far as the adjudication of cases is concerned. In Texas, Arkansas, New Mexico and Oklahoma, the supreme courts have supervision over the lower courts as to conflicts of holding and regulatory writs. The Supreme Court of Oklahoma has control over boards and commissions. In general, their jurisdiction extends to both criminal and civil cases in both law and equity. However, in Texas and Oklahoma, the supreme courts have only appellate civil jurisdiction, while the courts of criminal appeal exercise final jurisdiction in criminal cases and thus constitute the anomalies of second supreme courts. There is no provision for settling conflicts in the holdings of these courts on points of law.

The supreme courts in most intances can by writ of certiorari call for the records of the trials of the lower courts and decide the cases themselves. They can also instruct the judges of lower courts, if requested, on points of law in cases being tried in the lower appellate courts.

Appeal in all these states exists as a matter of right and not as a matter of law. This is responsible for repeated appeals or the fact that appellate jurisdiction is primarily continuous throughout the system of courts. This means that appellate jurisdiction, whether exercised by lower appellate courts or by courts of both original and appellate jurisdiction, does not relieve the dockets of the supreme courts to any considerable extent. Its being continuous rather than final means that it finally reaches the supreme court and breaks it down. The exception to this is the separate appellate criminal court which has final jurisdiction over its docket.

There is a large amount of concurrent original jurisdiction in the various systems. In Texas, there is concurrent original jurisdiction between justice's courts and county

courts and between county courts and district courts, and in Louisiana between district courts and justice's courts. There is a double system of courts in such instances rather than a unitary one.

The same class of courts in the various states differ considerably in their original, appellate and final jurisdiction. In a state like Texas and Louisiana with lower appellate courts, the final appellate jurisdiction of the district courts is restricted as compared with a state like Oklahoma which has no intermediate appellate courts exercising civil jurisdiction. In states that have no county courts, the district courts have a larger original jurisdiction.

There is less duplication in the jurisdiction of the courts of Arkansas than in those of any other southwestern state. Jurisdiction in the county is divided between the county court and the justice's court. There is no concurrent original jurisdiction between them and no appellate jurisdiction from the justice's court to the county court. They are practically separate and independent courts, from both of which lie appeals to the circuit courts. Since there are no inferior appellate courts, cases are appealed or removed directly to the supreme court. The jurisdiction of the courts of Arizona and New Mexico is distributed in almost the same way. In New Mexico, the jurisdiction of the county is divided between justice's court and probate court and in New Mexico appeals lie from the justice's court through the superior court to the supreme court. The size of these states and the consequent smaller volume of litigation make such an arrangement more feasible for them than for a larger state like Texas.

Judges

1. THEIR QUALIFICATION.

An age of 30 is generally required; from 2 to 5 years' residence in the state; citizen of United States and the state in which he is elected; 5 to 7 years in the practice of law or the same length of experience as lawyer and judge. He must be "learned in the law." This phrase has come down

from the middle ages without definition. It is in practice the ability to pass the state bar examination. Here again is a requirement as much in the air as Mohammed's coffin. It should be defined as holding a license to practice law or a certain amount of college training, or eliminated. It now means a certain amount of political tact necessary for election after the acquisition of a license to practice law.

2. THEIR ELECTION.

Judges in all the southwestern states from justice of the peace to chief justice are elected. The terms of office of the supreme justices vary from five years in Oklahoma to six in Arizona and Texas, eight in New Mexico and Arkansas and twelve in Louisiana. The district judge holds office for four years in Arizona, Arkansas, Texas, Louisiana and Oklahoma and for six years in New Mexico. It is noticed here that the term of office of the district judge averages less than half that of the supreme justice, yet because of the small district he is from and the larger volume of business that passes through his court, he should enjoy as much immunity and independence as a supreme justice. The district judge is generally regarded as the most important official of modern civilization.

3. THEIR SALARIES.

The salaries of the supreme justices range from $4000 in Arkansas, to $5000 in Arizona, $6000 in New Mexico and Oklahoma, $6,500 in Texas and $8000 in Louisiana. Only one state in the southwest, Louisiana, exceeds the average salary of the state judges of the supreme courts throughout the union. The average salary of the 284 state judges of the union is $7,185 ($14,000 is paid in Pennsylvania and New Jersey and $17,500 is proposed in New York and $25,000 in Michigan) while the average for the southwest is $5,916.66 2-3. The per capita cost of the supreme courts in the southwest in cents is .654 in Texas, 1.866 in Louisiana, 5.393 in Arkansas, 5.831 in Oklahoma, 7.358 in Arizona and 8.574 in New Mexico. The figures for Texas include the salaries of only three supreme justices while for the last

three years there have been six justices sitting in two commissions aiding the supreme court to unload its docket. It is estimated that it will catch up with its work in two more years.

The cost of all other courts per capita in cents for the southwestern states is 6.112 for Arkansas, 6.607 for Oklahoma, 8.331 for Arizona, 12.607 for Louisiana, 20.702 for New Mexico and 25.240 for Texas.

The total cost of the courts of the southwestern states is $52,883 for Arizona, $105,503 for New Mexico, $201,989 for Arkansas, $262,273 for Louisiana, $252,334 for Oklahoma and $1,207,637 for Texas. The cost of the courts of Texas is five times that of Oklahoma but its population is only about two and a fourth times that of Oklahoma.

Criticisms

1. CONSTITUTIONAL COURTS.

Practically all of the courts in all the southwestern states are constitutional courts. They are established by the constitution and cannot be changed except by amending the constitution. The process of amending the state constitution has broken down throughout the union. This means that such a set of courts is static and cannot be readily modified to fit the progress of the state. It soon happens that the growth of population and a more highly industrialized society demand more courts and frequently different types of courts. It is equally unwise to state salary of judges or their qualifications in the constitution because these matters are subject to frequent change, and should, for this reason be a matter of statute. None of these matters are stated in the Constitution of the United States relative to the judiciary. A normal growth of the judiciaries and their modification on a basis of experience ought not to be prevented by constitutional restrictions. The executive departments have considerably modified themselves by the establishment of boards and commissions, many of which exercise judicial powers. In some instances administrative courts would doubtless have served these needs

more satisfactorily. The legislative departments constantly change their numbers and their representative character by the creation of new districts, yet the courts are expected to give satisfaction without being permitted to change even in a half century. This has prevented the courts from changing their character and procedure so as properly to adjudicate a large amount of litigation that is now settled outside of the courts by conciliation and arbitration in an extra-legal way. This predicament of the courts is not of their own making, but at the same time is a cause of very serious criticism.

2. POPULAR ELECTION.

All the judges in all the courts of all the southwestern states are elected by popular vote. This has come about by the western states slavishly copying, without question, the changes made in the eastern state judiciaries by the Andrew Jackson revolution, and because of the levelling influences of the frontier. The idea has been prevalent that the judiciaries, because of their intimate relation to the individual citizen, should, like the executive and legislative departments, be subject to popular control. It has thus happened that a political theory, possibly defensible for a simple society, has been perpetuated into a highly industrialized society, the character of whose litigation has almost totally changed. In practice this theory, under present conditions, seems defective for the following reasons:

a. The technical character of a judgeship.

At the present time, increasing emphasis is being laid on the importance of training for administrative governmental positions. Some maintain that the merit system ought to prevail in the selection of administrative officials throughout our system of governments. Whatever may be said of its merits relative to the administrative side of government can be repeated with emphasis with reference to the judiciaries. There is no phase of government that demands an expert and a student for its execution as much as the judiciary. It is demanding too much of the electorate to ask it to select an expert.

b. The inefficiency of the electorate.

The elective principle is not wrong, but a good principle in ignorant hands is not generally successful. The present electorate is by far the most ignorant in the history of the republic. It is now not only electing but by the direct primary actually nominating the candidates for judicial office. The power of nominating is much more important than that of electing. The present electorate is not capable of selecting such experts. The American system of government as it is now administered places almost insuperable burdens upon the electorate.

c. It makes a politician out of a judge.

If there is anything that a good judge is not, it is a politician. It is repulsive to the judicially minded to have to go on the stump and campaign for office. This very fact will naturally eliminate the material that the office calls for. The result is the best campaigner becomes the judge regardless of qualifications. The sacred toga of a judge should not be colored by the muddy waters of politics. Justice is not a political matter.

d. The independence of the judiciary.

The independence necessary for a judge is destroyed by election. The judiciary becomes boss-ridden by virtue of the fact that a boss in a judicial district can dictate the election of the district judge. A district judge who enforces the law will almost invariably be defeated for reelection. He is forced to administer justice so as to please the dominant clique, club, society or boss in his district.

e. The exaggerated position of the jury.

Popular election has also resulted in the state judges almost wholly withdrawing from the process of trial by jury. The whole matter has been turned over to the jury, so that the judges are merely referees in a great forensic game in which the law-

yers play before the jury for their verdict. A toy judge presiding over an ignorant jury in the hands of astute lawyers diverts the old common law process of trial by jury into an American novice that could scarcely recognize its ancestor. It is in this way that judges have avoided the above responsibility and shifted the burden of law enforcement to the jury. They delight to tell us now that the enforcement of law is in the hands of the jury.

It is a noteworthy fact that the constructive period of American state judiciaries was prior to 1850 during the appointive bench. It was during this time that the English common law was adapted to American practice and the basic principles of American jurisprudence were worked out. It is also an equally important fact that it is the period since 1850 in the life time of an elective bench that has given us a technique of evidence and procedure and a system of trial by jury that have in many instances resulted in 50 per cent of all appeals and retrials being made on purely procedural errors. It makes little difference whether substantial justice has been obtained, but it is of maximum importance that forms have been properly complied with.

3. TRIAL BY JURY.

Trial by jury should be reformed in its procedure and restricted in its scope. Trial by jury is nearly the only institution that has come down from the middle ages practically unconstructively modified. It was in its origin and early application a method of limiting the absolute monarchy by being a restriction upon royally appointed judges. The jury has no such use today. It was a method by which the common people could limit the power of a royally appointed and arbitrary judiciary. It was an effective check in this regard. But as its uses then were made to fit a certain system of government so should it now function according to the present organization of society.

The jury is one of the pieces of the regalia of technique

that causes delays and retrials. It is the uncertain and unknown quantity in the game. The best of lawyers cannot advise their clients as to the outcome of a suit because of the jury feature. Charles A. Baston, chairman of the committee of professional ethics of New York County Lawyers' Association, says of trial by jury "that no more persistent barrier to the achievement of a just result could be conceived by a malignant enemy of mankind than the civil jury system as administered in practice. We hamper it as a popular tribunal by limiting the evidence which it may consider, and by instructing it unintelligently concerning the law which it is to apply. Then we let its uneducated prejudices produce the results, and point to them with superstitious pride, while we erect alongside of it another system, that of equity, in which the worshipped jury plays no considerable part. Yet with a straight face, and with a legal mind apparently all unconscious of inconsistencies, we praise both systems as having an equal claim to our admiration." This criticism is in the opinion of the writer, too severe, but it has enough truth in it to challenge the attention of students of civil government and jurisprudence. Trial by jury has been the object of panegyric ever since Tacitus eulogized it. It has been called "palladium of liberty," the "nation's chief defender," "the bulwark of our civil and political liberties." It has been said that the chief end of Anglo-Saxon jurisprudence is to put "twelve good and lawful men in a box." While it is undoubtedly true that the jury system is the most distinguished feature of Anglo-Saxon jurisprudence, it is also equally certain that there have developed certain weaknesses in its workings that need to be eliminated in order that this venerable institution may be preserved in a more perfected form for future generations. The jury system frequently ends in an almost total waste of time and money because "the verdict was excessive," or "the jury unduly influenced," or "guilty of misconduct," or "a juror couldn't remember the evidence," or "by intervention some lawyer decided to impeach the verdict."

Juries are very expensive for the following reasons:

a. Actual expenses paid them.

b. Time lost in going to and from court.

c. Time necessary to inform juries:

(1) A long list of names is selected by the jury commissioners and given to the sheriff.

(2) He summons these people to the county seat on a certain day.

(3) On the appointed day about one-fourth of these fail to appear.

(4) Then the sheriff must go after the absentees or summon additional persons.

(5) The court then hears under oath any reasonable excuse of anyone who desires to be relieved of jury duty. The list includes all those who have anything to do or those who are capable of serving on the jury. Most of the excuses are reasonable, and are so considered by the judge.

(6) By this time the list has been packed with "courthouse hangers-on" and professional jurors.

(7) Then comes the task of selecting "twelve good and lawful men."

(8) The attorneys may still find a number disqualified, and the sheriff will have to summon more "hangers-on." This reduces the jury to the poorest material in the county.

(9) It takes time to present evidence to the jury.

(10) The judge's charge must be prepared in writing and given to the attorneys, and in Texas the attorneys must be given a "reasonable time" to consider it before the judge can charge the jury. What is a "reasonable time"?

(11) The attorneys then make their argument before the jury.

(12) The jury, after a day or two, may report that it cannot reach a verdict or many give a verdict unsupported by evidence or contrary to the preponderance of evidence. In this manner, eventually the whole procedure comes to naught.

d. The jury system is responsible for many appeals, reversals, and new trials. It requires twice the time for a jury trial as for a non-jury trial. It is, therefore, a considerable item in the almost unbearable expense of state administration of justice.

The jury system is cumbersome from the first act of the jury commission to the rendering of the verdict by the jury. The delay and extra work caused by the jury system has been a large factor in the breaking-down of the state judiciaries. It has thus forced inadequate consideration of litigation and by delay has practically denied due process to a great many litigants whose cases have remained on the docket until the litigants were dead or the matter had adjusted itself.

Several items in the previous criticisms are responsible for the expensiveness of litigation in state courts. Trial by jury in all of its ramifications, multiple appeals, repeated retrials, technicalities of procedure, the inability of state judges to expedite the process of trial, and the almost complete control of the administration of justice by lawyers, enabling them in many instances to cause errors in proceedings that force retrials and appeals, are the main factors in the unnecessary expense in the cost of justice.

This is without doubt the most serious charge that can be brought against state courts. It would be rare indeed that one could find a court that discriminates against a litigant because he is poor or politically uninfluential. The question raised is, "Does the case of justice, regardless of the equal accessibility of the courts to all classes legally, not only exclude the poor from the process of litigation, but secure for them an inferior justice?" The retrials and appeals that most state court systems permit give the rich litigant the advantage, the poor litigant is forced to be satisfied with the decisions of the lower court whose judges are inferior and before which only the incompetent lawyers practice. "I fear that it must be admitted," said Woodrow Wilson, "that our present processes of adjudication lack both simplicity and promptness; that they are necessarily expensive, and that a rich litigant can almost always tire a poor one out and readily cheat him of his rights by simply leading him through an endless maze of appeals and technical delays."[1]

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[1]Wilson, Woodrow, "Constitutional Government in the United States," p. 153.

The jury system in the southwest has been extended into equity proceedings. This has aggravated the situation because the jury was in origin and has been almost exclusively in practice a feature of the common law. It is generally agreed that the jury is most out of place in civil procedure. It possibly should be limited to capital cases in criminal procedure. The jury might find its most fitting place in civil procedure when public questions or questions of policy are involved.

The make-up of our juries prevents the institution from achieving its best results. The ordinary jury is composed of a conglomerate of nationalities who are expected to be unanimous in their conception of justice. Such hodge-podges did not characterize the jury system in its beginnings. In Texas a representative jury would consist of a Swede, a German, an Englishman, a Mexican, an Italian, a Swiss, a negro, and a few hill billys—a mutual mistrust society. It would be miraculous if such a jury saw anything with unanimity.

Juries are now making themselves into local legislative bodies. If a law is not popular, they will not convict anyone of its violation. They interpret the mob psychology of the community, and if this says enforce the law, it is enforced; if not, the jury refuses to convict. Juries of this type, many of their members belonging to societies opposed to legally constituted authority, are really undermining the foundations of civil government.

What changes then in the jury system should be made in the southwestern states?

a. The elimination of the jury from equity proceedings.

b. The restriction of the jury in civil procedure to such matters as involve the community as a whole. In such matters the jury is a sort of legislative body acting on expert advice and only a three-fourths majority should be required for a decision. We let legislative bodies make law by a majority decision.

c. The jury should be abolished in petty criminal cases. Such matters are too trivial to require the time and cost that the jury system involves.

d. The jury should be restored to its proper place in the process of trial by jury and should be subject to the instruction of the judge in both the law and the evidence.

e. The judge should conduct the trial rather than referee it.

f. Service on juries should be compulsory except under the most exceptional circumstances.

g. Judges should rigidly judge of these circumstances. This would greatly improve the personnel of juries.

4. THE TECHNICALITIES OF PROCEDURE.

Technicalities of procedure have been built up by precedent and by legislation until an expert lawyer is likely to fail to file his case properly or to appeal it according to form. A partial list of these is worth quoting:

a. "The indictment or accusation found by the grand jury does not clearly state the crime; or

b. "It does not state that the act is forbidden by law; or

c. "The law itself is not sufficiently clear as to the exact criminal act which is to be punished; or

d. "The indictment misnames or wrongly names the person accused; or

e. "The crime was committed more than two years ago and the accused is therefore freed under statute of limitations; or

f. "That in the trial itself the rights of the accused were violated by trying him in a heated state of public opinion; or

g. "By allowing certain evidence against him to be produced which should not have been admitted; or

h. "By refusing certain evidence in his favor; or

i. "By the judge's decision on certain matters of fact which should have been left to the jury to decide; or by the partiality of the judge's charges, etc."[1]

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[1]Young, James J., "The New American Government and Its Work," page 338.

Judge Robt. W. Winston in a speech before the South Carolina Bar Association in 1914 stated: "A lawyer's education is a process of initiation into the mysteries of the law as it is; he is introduced into an existing system, and for admission to its practice, he must know it as it is, and not as it ought to be. There is therefore no incentive save intelligent citizenship, superior to the mysticism of professional order which prompts him to any active participation in legal reform."

An example of the significance attached to such technicalities is found in the recent refusal of the Court of Criminal Appeals of Texas to grant an appeal to L. B. Gray of Wichita Falls, because three words were omitted from the record sent up by the lower court. These words were "in this case." This omission due to the oversight of a stenographer, a mere technicality, is, on the basis of abundant precedent, made a barrier to substantial justice. Since this is the decree of the supreme court of the state it is the law. It certainly is neither justice nor common sense. The *Dallas News*, in commenting on this practice, said: "The only trouble with our present system—or at least one of the biggest troubles with it—is the fact that at times our most distinguished jurists get into the habit of considering that they are conducting in the name of the state a sort of *legalistic puzzle department*, instead of a tribunal where the rights and liberties of human beings are at stake."

5. Too Many Appeals and Retrials.

The many opportunities for appeal in most of the systems aid the criminal and the rich litigant. The technicalities of procedure make possible the realization on the opportunities for appeal. They fit into each other to make a system. There should be some restriction on appeal. In Texas, a probate case can receive four trials, two *de novo* and two on the record. A one-trial and one-appeal system should be established as far as possible. More than this should not be allowed as a matter of right, but additional appeals might be possible on condition that a judge of a superior court after a review of the record recommends

them. No appeal as a matter of right should lie to the supreme court of the state.

The many-appeal system is largely responsible for the inferiority of the lower courts. The theory has been that it makes no difference about the grade of these courts, if they have no final jurisdiction.

6. LACK OF EMPHASIS ON THE LOWER COURTS.

The state systems of courts are so constructed that the great mass of litigants never see a competent judge nor hear plead an able lawyer. It is true that as complicated points of law may arise in a case involving $100 as $2500. It is also as important for the poor litigant to have his case properly adjudicated as the rich litigant. What difference does it make if a man's life or all of his property is involved—whether it is $50 or $25,000? The old theory of "rich litigant, rich judge, ignorant litigant, ignorant judge, poor litigant, poor judge" should be permitted to pass out with other mediaevalism.

The lower courts constitute the open forum of the common people and the personnel of their benches should be such as would command the respect of the best lawyers of the bar. Good lawyers regard the practice before these lower courts as "chicken feed," fit only for the young lawyer or the old lawyer who has never risen above it.

The district judge is said to be the most important official connected with state government. In each generation a good many of the lives and practically all of the property of the community pass through his hands. Why should not he be the best judge in the system if any discrimination is made?

Again, the masses of the people who pay the expenses of government are entitled to have the courts at the bottom as efficient as those at the top. It is justice.

7. JURISDICTIONAL OVER-LAPPING.

There is considerable jurisdictional duplication. There is a great deal of concurrent jurisdiction, both original and appellate. This is found between county and justice's

courts and between county and district courts. There is usually an appellate jurisdiction running from the county courts to the supreme court. This amounts to a padded system of courts that is unnecessary and expensive. The lack of unity ends in a set of courts rather than a system. Concurrent jurisdiction, appeals and removals have been the main ties between the courts rather than a closely linked and well divided jurisdiction.

Program of Reconstruction

Any program of reconstruction consists of at least five essential divisions: 1. A constitutional amendment disestablishing the present courts, and making provision for the establishment of a system of courts. 2. Arrangements for instituting a simplified procedure. 3. Reorganization of the courts. 4. The establishment of courts of conciliation and arbitration as a part of a county system of courts. 5. An administrative system for the courts.

1. THE CONSTITUTIONAL AMENDMENT.

The constitutional amendment should read: The judicial power of the state is vested in one supreme court and such inferior courts as the legislature may see fit to establish. The judges shall be appointed by the governor with the approval of the senate from a list nominated by a judicial council which the legislature shall establish, and shall hold office during good behavior.

2. ARRANGEMENTS FOR INSTITUTING A SIMPLIFIED PROCEDURE.

The legislature shall pass a liberal practice act, giving to the supreme court the power to establish a simplified judicial procedure.

3. THE REORGANIZATION OF THE COURTS.

There should be one supreme court, exercising appellant civil and criminal jurisdiction, and consisting of sufficient justices and chambers to meet the demands of the litigation

of the state. Appeals should lie to the supreme court not as a matter right but by the permission of the court, after an examination of the records.

There should be a set of district courts, having both original and appellant jurisdiction in both civil and criminal matters, properly distributed over the states and officered so as to meet the demands of litigation in their respective districts.

There should be a county system of courts of sufficient dignity in jurisdiction and personnel to command the respect of the people. These courts should be probate courts for the counties and the municipal courts of the county should be chambers of this court. The justice's courts should be a part of the county court. The chief justice of the county should have the power to appoint the justices of the peace for a period of five years.

4. ESTABLISHMENT OF COURTS OF CONCILIATION AND ARBITRATION.

A board of conciliation should be appointed by the chief justice of the county for each county to consist of such a number of conciliators as he shall determine. The chief justice of the county shall be *ex officio* chairman of this board and shall have power to increase or decrease its membership as he sees fit. He shall have power to remove the conciliators at his pleasure. The conciliators may sit as a board or separately.

Any qualified voter shall be eligible for appointment as conciliator for the county in which he resides. Any member of the bar who acts as conciliator shall be debarred from appearing in a subsequent proceeding in behalf of either party to a controversy submitted to him as a conciliator.

An effort at conciliation shall be compulsory as a prerequisite to a suit in civil action involving less than two hundred dollars, except remedial or provisional actions involving title or possession of real estate. Provided, however, that any district judge may direct the institution of

judicial process in any trial court without recourse to conciliation.

Any person having a civil claim not falling within the above exception shall request a conciliator in his county to summon the party complained against to appear before him at a definite time and place. If the conciliator succeeds in reaching an agreement, he shall certify the same to the county judge who shall enter the terms of the agreement, signed by the parties to the conciliation, upon the docket of the court. This agreement shall then have the full effect of a judgment of the said court. If there is a failure to conciliate after an honest effort has been made, the conciliator shall give a certificate to this effect to each of the parties which will permit their controversy to take the course of regular judicial procedure.

A nominal fee of twenty-five cents shall be paid to the conciliator by the initiator of conciliation in controversies involving ten dollars and less, and fifty cents in controversies involving ten dollars and more. When conciliation is accomplished the conciliator shall receive a fee of one dollar in controversies involving ten dollars or less, two dollars as a fee in controversies involving from ten to one hundred dollars, and two per cent of the amount in controversy above one hundred dollars. The conciliator may collect these amounts from one or both of the parties to the agreement.

Before a hearing has been held, a change of venue should be permitted by mutual agreement of the parties concerned. Any conciliator is disqualified to act in any controversy in which he is interested either by business or family relations.

Arbitration in commercial matters should be provided by law, and all commercial contracts should contain an arbitration clause. The parties to a commercial dispute should be permitted to select an arbiter, and if they cannot agree upon an arbiter, the county judge shall appoint the same. When the arbiter makes the award, he shall certify the same to the county court which shall enter it upon record as its judgment.

Conciliation and arbitration are well recognized methods

of handling commercial disputes throughout the world. There is a large amount of such controversies in urban centers in the southwestern states that could be settled quickly and cheaply in this way. The adoption of these methods of adjustment would considerably relieve the courts and serve to preserve a better feeling among those who resort to conciliation or arbitration to adjust their difficulties.

5. AN ADMINISTRATIVE SYSTEM FOR THE COURTS OF THE SOUTHWEST.

a. *Judicial Council.* There should be established by law a judicial council of which the chief justice of the supreme court should be *ex officio* president. He should have associated with him the senior justices of the various state courts, the president of the state bar association, three members of the state bar association elected by the association for a term of five years, and the president of the state legal aid society. This body shall receive no pay for its services.

It shall be the duty of this council to recommend to the governor two nominees for each vacancy that occurs in the state judiciary from time to time. It should be imperative that the governor appoint one of these nominees to fill such vacancy. All judges from the district judges to the supreme justices should be appointed for life by the governor with the approval of the senate, or legislature, if the body be unicameral.

It shall also be the duty of this council to study the system of courts as it works with a view of being able to suggest methods of improvement as experience reveals its weaknesses. The clerks of the various courts of the state should make annual reports to the council on the workings of their respective courts, and the council should make an annual report on the workings and conditions of the state judiciary to the governor and legislature. One of the chief purposes of the council should be to see that the judiciary is brought into close touch with the progressive jurisprudence of the nation and the world, and that the courts, the bar, legal

aid societies, and the people are more closely related to each other.

The council should immediately give its attention to the devising of a more simple procedure to the end of expediting justice. Delay, expense, and the miscarriage of justice should be reduced to a minimum. A close study of the courts by a body of legal experts who are participants in the administration of justice would afford the surest guarantee of an efficient system of state courts. The supreme court, under a liberal practice act, should be permitted to avail itself of the work of the council in adopting new rules of procedure for the entire judiciary.

b. *Legal Aid Society.* There should be organized a state legal aid society with locals in all of the counties whose business it should be to aid in the administration of justice to the poor. All judges and officers of the law have agreed on the need for this service which no generous and sympathetic community can refuse. This social experiment is one of the most impressive manifestations of a more humane justice that has developed in the last quarter of a century. It is thought best for the present that this organization should be supported by private aid, and that each local organization use its own method in furnishing legal aid where it is needed. Public defenders may be selected in any way the local may determine, and they may be paid for their services as may seem best. The pay should be nominal as such services could be distributed among the members of the local bar.

c. *Chief Justice As Administrator.* The chief justice, acting with the advice of the supreme court, shall be charged with the administration of justice throughout the state. He should, therefore, be relieved of writing decisions to such a degree as will give him ample time to discharge his administrative duties efficiently. It shall be his duty to divide the supreme court into chambers, civil and criminal; to distribute the work of the court; to convoke the court at his pleasure or at the request of any of the associate justices for discussion and decision when it is necessary or required

to preserve the unity of the law and procedure of the state. The following instances are suggested as a basis for convoking the court *en banc*: (1) Controversies involving the constitutionality or validity of a statute; (2) matters involving policies of state; (3) disagreements between divisions of the court on a point of law which was the basis of the decision.

The chief justice shall have power to shift the associate justices to other divisions of the supreme court and to the bench of lower courts for at least one month each year, and to call judges from these courts to the supreme bench at his pleasure. No judge should be required to abandon any case that he has begun to try or review. This exchange of judges would acquaint the judges with each other and the problem of justice throughout the judiciary and the state. Such association would undoubtedly result in a sympathetic understanding among the courts, and in an effective administration of justice. Uniformity and standardization of methods of procedure would soon characterize the administration of justice. He shall have power to convoke the judges of the state once a year for the purpose of conferencing about the problems of the administration of justice in the state.

The supreme court should be given complete control of practice, pleading, procedure, simplification of evidence, terms of the courts, modification of trial by jury by a simple practice act modeled after the English statute of 1875 or the New Jersey Practice Act of 1912. It is axiomatic that the development of the common law system rests with the courts. If constitution, statutes, and an unchangeable technical procedure prevent courts from making imperative changes dictated by their experience, a progressive justice adapted to the changes in society becomes impossible and stagnation results. The scientific character of the common law which follows from the fact that its method is empirical is destroyed by such a system. The theory and the practice are thus antagonistic and contradictory. The states are laboring under the delusion that they have the common law system when in fact a very different system

has practically eliminated the common law practice. Trial by jury as practiced in most of the states is a classic illustration of this fact. It is a fact well known to students of jurisprudence that the English reformed procedure has been eminently satisfactory for nearly half of a century, and that the New Jersey Act of 1912 has met the expectation of its friends. The American Bar has recommended to Congress, "to authorize the Supreme Court of the United States to prescribe forms and rules, and generally regulate pleading, procedure and practice on the common law side of the federal courts."

The senior justice of the appellate courts, if there is a separate set of subordinate appellate courts, should be constituted the administrative agent for these courts to divide the docket, to preserve unity among the courts, to shift judges, and to convene the courts. His authority should be subordinate to and in harmony with that of the chief justice of the state.

The senior justice in the district courts should be designated as the administrative agent of the district courts to see that these courts perform the fundamental task of great trial courts of the Commonwealth. He should have authority to divide the district courts into divisions, to designate one division for civil matters, to shift judges from one division to another and from district to district, and to convene the district courts whenever there is litigation to be adjudicated.

There should be effective control over the county courts by these district courts. The senior justice of each district court should be permitted to appoint for a period of five years the county judge and his associates from a list of lawyers recommended by the local bar association. This county court should be sufficiently large to handle the litigation of the county. If business requires it, there should be associate justices who should hold court at various points in the county under the direction of the senior justice of the district court. In urban communities, there should be a special division of the county court so constituted and so admin-

istered as to be peculiarly fitted to adjudicate litigation arising in an industrial community.

The justice's court should be retained but reconstructed by giving the county judge the power to appoint for a period of five years a sufficient number of justices to meet the demands of the county for this class of litigation. These justices should be paid a salary ranging from $100 to $500, and should be subject to the county judge as the administrative official for the county system of courts. The county judge shall also have the power to appoint and dismiss conciliators and arbiters as the plan of organization provides.

It is the purpose of this proposal to give especial attention to the creation of an efficient system of courts for all grades of litigants throughout the state; but on the assumption that the rich litigant can generally care for himself, special emphasis is laid upon the necessity of a carefully planned set of lower courts from the district courts to the justice's courts to the end that a satisfactory settlement may be provided for the claims of the poorer class of litigants as well as for the more fortunate members of the body politic. The lower courts should be just as efficient as the higher courts. Democracy demands justice for all.

INTERMEDIATE-TIME CREDITS FOR AGRICULTURE[1]

A. B. COX
Texas Agricultural Experiment Station

The Evolution of Agriculture and Agricultural Production

Notwithstanding the fact that agriculture was the first of the great occupations to be followed by man in the development of modern civilization, it has been the last to adopt modern business methods. Agricultural practices were developed at a time when capital goods were few in numbers, simple in construction, and inexpensive. The farmers either made their own instruments of production or else waited until they had accumulated a sufficient surplus of products to barter for the desired articles.

At this stage of development credit was used primarily to obtain goods for immediate consumption, and borrowing was properly considered a sign of poor management and the practice was rightly condemned. The borrower was looked upon with contempt, or as a subject of charity.

Modern agriculture is a very different process from what it was in primitive days, and must likewise be financed differently. The tremendous increase in the numbers and complexities of machines used in agriculture, the use of fertilizer to stimulate yield and improve quality, and the combination of expensive livestock with cropping operations to secure a well balanced organization, have made large amounts of capital essential to efficient production.

Formerly, agricultural practices were matters of tradi-

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[1]Paper read at the Third Annual Meeting of the Southwestern Political Science Association, Norman, Oklahoma, March 23, 1922. This paper is based upon "An Economic Study of a Typical Ranching Area in the Edwards Plateau of Texas," by B. Youngblood, Director, and A. B. Cox, Chief of the Division of Farm and Ranch Economics, Texas Agricultural Experiment Station, Agricultural and Mechanical College of Texas.

tion handed down from father to son. Modern agriculture is concerned primarily with the proper co-ordination and manipulation of the laws of the physical, biological, and economic sciences which are applicable to agriculture. Knowledge, and not physical strength, has become the predominant factor in determining success or failure. Modern agricultural high schools, colleges and other educational institutions have made it their business to supply the desired technical information, and have placed opportunities of acquiring the knowledge necessary for the practice of scientific agriculture within the reach of all. As a result, many are now acquiring the ability to handle large amounts of productive capital in agriculture, but are deprived of the use of their abilities because of a faulty credit system. They are forced to begin with inadequate facilities and accumulate working capital in such tiny driblets that it often takes ten or fifteen years for a man to equip himself for most efficient production. As a result, the most vigorous often refuse to go into agriculture because of the handicaps which are a result very largely of an antiquated system of financing productive enterprises on the farm. Many who do go in become so discouraged because of a lack of adequate equipment and the resulting slow processes of accumulation that they either quit, or simply lose their ambitions to get ahead.

It is quite generally recognized that our credit system has not kept pace with the development of scientific agriculture, and with the increased abilities of farmers. There are still many agricultural communities where the farmers take off their hats and tremble in the presence of the local banker, as though they were asking for charity when asking for a loan to buy livestock or a productive machine. Where such a condition prevails, the banker practices a pawn brokerage business, and the farmers are forced to follow a miserable "hand-to-mouth" sort of agriculture. Such conditions are intolerable, if our farmer folk are to receive their rightful share of the national dividend.

Three Types of Credit Required in Agriculture

Land or Long-Time Credit.—Modern agriculture requires at least three different types of credit. The producer of any agricultural product must first secure the physical plant, the land and permanent improvements, required to carry on the business. The land does not wear out under proper care and it produces but a small fraction of its capitalized value each year. The proper credit system for the purchase of agricultural land requires a long time to correspond to the rate of turnover of the investment and a system of amortization payments.

Marketing or Short-Time Credits.—The limitations of nature prevent the farmers and other agricultural producers from establishing a continuous harvest of their crops. Indeed, it is often necessary to harvest the products of an entire year within the course of a few weeks. If the farmers are to prevent the volume of their produce from unduly depressing the price, they must devise a means of marketing which will prevent, as nearly as possible, seasonal gluts and scarcities. They thus require a system of credits based on warehouse receipts, or similar evidence, to prevent dumping and to make the orderly merchandising of their products possible. These are commercial loans and can ordinarily be turned within six months or less.

Capital or Intermediate-Time Credit.—A suitable system of long-time credits for the purchase of land and of short-time system of credit for the proper merchandising of agricultural products are essential, but land without labor and capital to work it is useless, and a marketing system is of service only when there are products to be marketed. It is the function of intermediate-time credit to provide labor and working capital. Agricultural capital consists of such things as livestock, agricultural machinery, and fertilizer.

The productive enterprises undertaken by the farmer turn faster than land, but they do not turn as fast as his marketing operations. The man who raises steers for the market turns his capital once in four or five years. The farmer who buys a tractor, a thresher or some other machine, does

not get an increased product sufficient to pay for the machine the first year. He rather expects the machine to last four or five years, and that the four or five surpluses will pay for the machine and leave a profit. The modern credit system is, therefore, in more or less the position of asking the farmer to use a stick and a flail to produce and thrash grain until he has accumulated enough to buy the desired plows, thresher, and other capital equipment. Such methods are not tolerated in any other line of business.

Intermediate-Time Credit Defined and Described

Intermediate-time credit may be defined, therefore, as that type of credit which is used for the purchase of productive capital, the length of the turnover of which is greater than six months and less than that ordinarily required for land. In the main, the time required is from one to five years.

Intermediate-time credits are used primarily in securing investment capital rather than in buying and selling operations. The farmer or ranchman who buys a bred heifer to raise calves does not expect to pay the loan used in her purchase out of her resale, but rather out of the sale of her calves. The man who buys a cultivator, a tractor, or a team expects to pay for the article by the sale of more agricultural products and not the resale of the goods bought. He who puts fertilizer in his soil loses his product, insofar as its resale is concerned, but he has presumably increased the productive power of his land for several years. In either of the typical cases just mentioned, the productive efficiency or turnover of the investment extends over a longer period than six months and the investment is either impossible to liquidate, or such liquidation entails great hardship on the operator. Therefore, the man who makes a loan for the purchase of such goods for a time less than the normal turnover, without satisfactory assurance of renewal, is a speculator, and runs the risk of losing the capital borrowed and may endanger his entire enterprise.

Characteristics of Intermediate-Time Credit Security.—

The time element in intermediate-time credit is not the only respect in which it differs from land and short time commercial credits. The basis of security is also different. Short time credits are secured by commodities on the market or about to be marketed. Land credits are based on land that can neither be hidden nor destroyed. Intermediate-time credits, on the other hand, are based very largely on the issues of a productive undertaking. The success of such an undertaking depends on the quality and quantity of capital put into it and the ability and the good faith of the man conducting it. The security rests, therefore, not only on the commodities bought, but on the abilities of the men handling the enterprises in which those commodities are used.

The Manner of Liquidation.—The manner of liquidation in the case of intermediate-time investments differs essentially from either short or long time credits. Short time credits are usually liquidated in a lump sum, and the long time credits are amortized in equal annual installments. Intermediate-time credits are similar to land loans in that they are essentially amortization loans, but they amortize differently from land loans. The return from an application of fertilizer, for example, begins high and runs down presumably to zero. On the other hand, the amortization of loans on stock cattle begins low and is accumulative. It is evident, therefore, that a different system of payments should characterize intermediate-time credits from either long or short time credits.

It may be said, then, that those engaged in agriculture need a long time investment credit on the amortization plan to enable them to secure their land and permanent improvements; that they need a system of commercial credits based on warehouse receipts, bills of lading, and similar securities in order to accomplish the orderly marketing of their products; and that they need a system of intermediate-time credits designed to supply them with productive capital, such as live stock, machinery, and fertilizer, which is based on the rate of turnover of the capital used, and which is

provided with a system of payments adjusted to the needs of the enterprise.

Facilities for Supplying the Three Types of Agricultural Credit Needed

The enactment of the Federal Farm Loan System has gone a long way towards providing a system of credit designed to meet the needs of the farmers in their efforts to acquire land and make permanent improvements. The fundamental requirements of length of time and amortization payments are provided. The system can doubtless be improved, but it may be said that a system of land or long time credits has been provided.

The passage of the law creating the Federal Reserve System of banking provided all the essentials necessary for the short time commercial credit transactions of agriculture. The producers of agricultural products enter the field of commerce when they begin the sale of the products they have produced. The six months' discount privilege granted on paper for agricultural purposes, the privilege of the use of bank acceptances and other conveniences are ample for short time credits, especially when farmers are organized and have their business properly systematized to avail themselves of all the privileges granted by the system.

Peculiar as it may seem, a system to supply the intermediate-time credit, the credit required to obtain the capital essential to the productive processes, has not been provided. We have made a good credit machine except that we have forgotten to put into it the engine, the most vital part. It was the agricultural crisis we are now passing through which revealed the inadequacy, the inappropriateness and the danger of our present system to supply agricultural productive capital. Loans for the purchase of fertilizer, breeding stock, teams and agricultural machines on six month's credit are not long enough for the farmer to put the capital into his business and get a return sufficient to pay the loans. Since the length of the loan does not correspond to the length of the turnover of the business, the borrowing of

such capital from the Federal Reserve and other commercial banks not only hampers the farmer's enterprises, but jeopardizes the solvency of the banks. The evils of frozen loans in times of crises will continue to exist as long as deposit banks continue to make large numbers of intermediate-time investment loans, even though such paper is limited to six months or less time.

The law creating the Federal Land Banks provides that they may make loans for the purchase of certain capital goods, but such a provision is a mere makeshift, for they are no better adapted to handling such loans than the Federal Reserve. As has been shown, the maximum turnover for intermediate-time credit is about five years. The minimum provided by the Federal Land Bank is five years. It is evident, therefore, that our present credit system does not provide adequate credit facilities for intermediate-time credit for agriculture. The gap between the long and short time credits must be filled before agriculture can be adequately financed.

Results of the Absence of Intermediate-Time Credit Facilities

The lack of the proper intermediate-time credit facilities prevents producers in agriculture from getting credit in times of depression, the time when it is most needed. In 1919 cattle loan companies and commercial banks were urging ranchmen to enlarge their borrowings. In 1920 and 1921 they forced them to liquidate wherever the margin of security was wide enough. The borrowers are thus in the unhappy position of being urged to borrow when prices are high, because deposits are large, and forced to sell when prices decline, because deposits fall off.

The rate of interest paid on loans for agricultural productive capital is too high, especially in times of depression. This is true because when times are good the producer borrows in order to start an enterprise, and is forced to renew his note five or six times before it can be paid. The first loan having been made, the borrower is at the mercy of the

banker in the matter of his renewals. Ranchmen who borrowed at 8 per cent in 1919 are paying 10 per cent now with a bonus, if they have been able to renew at all. In a recent study made in Texas it was found that 95 per cent of the loans were bearing 10 per cent interest plus discounts and bonuses.

The length of the loans on agricultural productive capital does not correspond to the rate of turnover. The figures for Sutton County, Texas,[2] show that 90 per cent of the loans are made for six months or less. The bankers admit that they have to renew such loans six or eight times, and the ranchmen assert that they should have at least three years on such loans.

The present system, or lack of system of intermediate-time credit, is thus not only an injustice to the producer, but society is penalized because the system shackles production. Immediate steps should be taken to remedy the situation.

The Amount of Intermediate-Time Credits Required

It is believed that enough evidence has been given to show that intermediate-time credits are essentially different from both long and short time credits, and that they are inadequately provided for. It remains to be seen whether the demand for such credits is large enough to justify separate provision for their satisfaction. According to Mr. Valgren,[3] the personal and collateral agricultural loans held by banks in the United States equal approximately four billion dollars. It is impossible to tell how much of this represents intermediate-time and how much short time credit, but if we may assume that the requirements are half and half, then intermediate-time credits represent about two billion dollars. The amount of farm mortgages held by banks, according to the same authority, was only $1,447,500,000, which would seem to indicate that the volume of

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[2]An Economic Study of a Typical Ranching Area in the Edwards Plateau of Texas.

[3]U. S. Dept. Agr. Bulletin No. 1084: "Bank Loans to Farmers on Personal and Collateral Security," p. 4.

intermediate-time credit compares favorably with the volume of commercial bank land credit.

It is believed, however, that bank loans under the present system do not give an adequate picture of the intermediate-time credit requirements of agriculture. In a recent survey made by Youngblood and Cox,[4] in a typical ranching section of Texas, the average indebtedness on livestock was found to be approximately $30 per animal unit, seven sheep and goats were counted the equivalent of one cow and the cow was taken as the unit. According to the United States Department of Agriculture Yearbook, there were approximately seventy million such animal units in the United States in 1921. At the above rate the cattle and sheep alone would carry a total credit of over two billion dollars. There are, according to the Yearbook, more than twenty million horses and mules in the country. If they should carry as heavy loan as cattle and sheep, they alone would require over a half billion dollars to finance them. The enormous business done by the cattle loan companies shows, in a measure, how very large the volume of such loans is.

The livestock loans represent only a part of the intermediate-time credit requirements. The volume of credit needed for the purchase of agricultural machinery, fertilizer, seeds, fruit trees and other capital goods is perhaps much larger than that for livestock alone.

At any rate, a credit institution which is designed to take care of the livestock paper, the farm machinery paper, the fertilizer paper, the seed, tree and other similar paper, deserves an equal consideration with long and short time credits in our national system of credits.

Sources of Supply of Intermediate-Time Investment Capital

Granting that there is sufficient demand for intermediate-time agricultural credit to claim the attention of Congress,

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[4] "An Economic Study of a Typical Ranching Area in the Edwards Plateau of Texas."

are there sources of supply to meet the demands at reasonable rates, provided the paper can be made otherwise attractive? Not having tried such a plan, there are, of course, no conclusive figures to which to refer. The primary source of supply of such funds would perhaps come from savings accounts. Young men who are laying aside a certain portion of their incomes with the hope of going into business on their own account after a few years, would find it convenient to buy intermediate-time paper. Tenant farmers who are planning to buy farms would find that such investments correspond to their needs.

Moreover, the readiness with which the short time securities of the Government were absorbed may be taken as some indication of the possible demand for intermediate-time securities. The big eastern bankers who have expressed themselves feel that intermediate-time paper properly secured would find a ready market at advantageous rates.

Essential Requirements of an Intermediate-Time Credits System

The function of supplying intermediate-time credit belongs essentially to some form of investment banking. The purchasers of capital goods to produce agricultural products use up the goods in their productive processes and must depend on paying their loans out of the increased efficiency of the enterprise which is spread over the life of the capital bought. Short time liquidations required in deposit banking are wholly unsuited to the needs of intermediate-time credit requirements.

Banking Machinery Required

Central Discounting Institution.—Any form of investment banking must secure the funds necessary to carry on its business by a sale of bonds, the length of which must correspond to the turnover of the enterprises being financed. In the case of intermediate-time credits the debentures is-

sued in lieu of the notes discounted should run from one to five years.

The efficiency of any sort of bond issuing institution depends very largely on its size and its business record. The size is measured in terms of paid-in capital stock and unimpaired surplus. It is evident, therefore, that the central discounting agent or agencies should be large.

The central discounting agencies must be located as near as possible to the centers where their bonds are most greatly in demand. The central institutions must reach the individual borrower through some responsible local organization.

Local Guarantee Associations.—The local organization which makes the loans to the producers is the vital unit in the system. This local organization may be a private corporation, a joint stock company, or a co-operative. Since, as has been pointed out, the thing for which the loan was made to purchase is more or less unattachable when once the productive process has been started, the security must cover the product of the thing bought as well as the thing itself, and in addition a further guarantee must exist to cover the personal risk involved. The property risks are covered by a mortgage, and the personal risks are covered by the capital stock and surplus of the local organization. Modern cattle loan companies are fair examples of the essential characteristics of such organizations. The corporate cattle loan company could be turned into a co-operative by the borrowers subscribing the capital stock, managing it through a board of directors and dividing profits on the basis of patronage. At the present there would doubtless be a place for all three forms of local organizations. In either case, the local bank might serve as the nucleus of the organization and the officers of the bank might well be the officers of the loan organization.

Regional Discount Agency.—In some instances, it may be advisable to have a regional discount agency that serves as a link between the local organization and the central discounting institution. The position of the Fort Worth Stock and Agricultural Loan Agency in transferring credit from

the War Finance Corporation to the local bank is a good example of the function of such an institution.

Recent Proposals for Furnishing Agricultural Intermediate-Time Credit

Proposal of the Joint Commission of Agricultural Inquiry.—The report of the Joint Commission of Agricultural Inquiry proposes that a separate department be organized in the Federal Land Banks to undertake the handling of intermediate-time agricultural credits. When the differences between intermediate-time and long time credits are considered, it is difficult to see any well founded reason why a Federal Land Bank should be called upon to handle intermediate-time credits. In fact, the two types of credit are so different, that the machinery required for handling them would have to be entirely separate. It would thus appear that putting the two systems together might cause one or the other to suffer in efficiency, and both might suffer.

Longer Time on Agricultural Loans Granted by Federal Reserve Banks.—Some have argued that the Federal Reserve Banks should grant twelve months credit to agriculture. When the limitations of deposit banking for making long time credits are considered, and it is further recognized that even the twelve months' time does not meet the demand of agriculture, it is believed that such a modification would be detrimental both to the best interests of the Federal Reserve System and agriculture.

Conversion of the War Finance Corporation into a Permanent Intermediate-Time Credit Institution.—It has been proposed that the War Finance Corporation be reorganized and converted into a permanent institution for furnishing intermediate-time credit. The fact that it will take several years for the corporation to wind up its loan renewals, even though it makes no more new loans after July, and the further fact that is has already created machinery for making loans, are strong points in favor of making it the center of the intermediate-time credit system. Moreover, the corporation has been successful in its efforts to relieve the em-

barassing credit situation in which agriculture found itself in 1920.

Whether some existing institution is modified to meet the needs of intermediate-time credit, or an entirely new organization is set up, is a matter that should be worked out on the basis of serviceability. In either case, it is a means to an end. The main object should be to supply the much needed credit facilities. Indeed, those engaged in agricultural production have a right to demand it.

THE OKLAHOMA LEGISLATURE*

M. H. MERRILL
University of Oklahoma

It would be impossible to give, in the space of time available for this paper, a complete survey of the Oklahoma Legislature. It will be my purpose, therefore, to sketch very briefly, its structure, organization, and powers, and to devote the major portion of my attention to a discussion of some of the outstanding weaknesses of our legislative system and to a suggested program for eliminating these weaknesses.

Composition

The Oklahoma Legislature, like other state lawmaking bodies, consists of two houses, the Senate and the House of Representatives. The Senate consists of forty-four members, chosen by popular vote from districts, each district being represented by either one or two senators. The term of senators is four years, one-half of them retiring every two years. The House of Representatives has a membership, fluctuating in number from one session to another, with one hundred as the basic figure. The term of representatives is two years, and an entirely new House is elected each biennium. Members of the Legislature must be qualified electors of the district from which they are chosen and must continue to reside therein during their term of office. Senators must be twenty-five years of age; representatives, twenty-one.[1]

Regular sessions of the Legislature are held biennially in the odd-numbered years. Special sessions may be called by the Governor at any time.[2] There is no limitation placed on the duration of legislative sessions by the constitution,

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*Paper read at the Third Annual Meeting of the Southwestern Political Science Association, Norman, Oklahoma, March 24, 1922.

[1]Oklahoma Constitution, Art. V, Secs. 9, 9a, 10.

[2]*Ibid.*, Art. V, Secs. 26, 27; Art. VI, Sec. 7.

but as the compensation of members is fixed at six dollars per day for the first sixty days of the session, and is limited to two dollars per day thereafter, the legislators finish the business of the session as soon after the expiration of the sixty days as is possible.

Limitations

Subject to constitutional limitations, the authority of the Legislature extends to all rightful subjects of legislation. The constitutional limitations include the familiar restrictions placed by the United States Constitution upon all states, and limitations imposed by the Oklahoma constitution. These last may be classified broadly into four groups: First, restrictions designed primarily to protect the rights and liberty of the individual; and placed in that section of the Constitution designated as the Bill of Rights.[3] These provisions are very general in their terms, and whether any legislative act is in violation of them is a matter for judicial determination. The second class consists of restrictions specifically forbidding the Legislature to enact laws upon certain subjects or to pass certain types of legislation with regard to permitted subjects, and are imposed not as a protection of the rights and liberties of the individual citizen, but because in the opinion of the framers of the constitution, the best interests of the state as a whole required that these subjects be removed from the domain of legislative action. An example of these provisions is that prohibiting the Legislature from granting exclusive rights, privileges or immunities to any person, corporation, or association.[4] Restrictions of the third class consist of a number of constitutional provisions prescribing the procedure by which laws may be passed. These requirements add considerably to the complicated legislative procedure, which, as we shall see, is a factor in legislative inefficiency. Additional restrictions upon the power of the

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[3]Oklahoma Constitution, Art. II.
[4]*Ibid.*, Art. V, Sec. 51.

Legislature arise out of the fact that the framers of the Constitution saw fit to include in that instrument many provisions of the type usually embodied in legislative enactments, especially in regard to such subjects as the state judicial system, corporations, and revenue and taxation. Since the Constitution cannot be modified by legislative enactment, the effect of these provisions is to reduce the power of the Legislature over the subjects covered by them.

Organization and Procedure

Legislative organization and procedure follow in their general characteristics the organization and the parliamentary practice prevailing among lawmaking bodies of Anglo-Saxon countries. Because of this substantial similarity, it is deemed unprofitable to enter into a detailed examination of them. It is sufficient to say that the effect of many of the rules is to make of legislation a complicated and technical task, which requires the largest part of a member's first term to comprehend, and to impose such a burden upon effective work that they are frequently honored in the breach. When a bill has successfully made its way through both houses, it still may be killed by the veto power lodged in the hands of the Governor. A veto may be overridden by the customary two-thirds vote.[5]

Defects of the Legislature

Throughout the United States there is a widespread dissatisfaction with the state legislatures. Their ability and their motives are alike under suspicion. This distrust of the representatives of the people holds an especially prominent place in the public opinion of Oklahoma. Conversations with men and women representing every class in the state reveal a general feeling that for the most part legislators are not all that they should be, that the Legislature itself is a detriment to the state, albeit an unavoidable one,

[5]Oklahoma Constitution, Art. VI, Secs. 11, 12.

that the legislative sessions are to be anticipated with foreboding, endured with patience and long-suffering, and remembered with relief at their close. The prevalence of such sentiments should arouse more than mere regret. When the people feel that no good can come from the Legislature, that it cannot or will not cope with the problems of the time, then all the foundations of social order are endangered. It therefore behooves us to examine the basis of this feeling, to attempt an understanding of the condition from which it springs, and to seek a remedy for those conditions.

Let it be said first that much of the popular criticism of our lawmakers is unjustified in fact. Gross corruption does not run riot in the Oklahoma Legislature. The great majority of the members are law-abiding, honest and sincere in private life, and there is no sinister alchemy in selection to public office that transmutes such a man into a corrupt and self-seeking legislator. Moreover, the Legislature is not, as the people's fancy so often pictures it, a "do-nothing" body. Whatever we may think about the quality of the result produced, we must admit that it is the product of strenuous labor. The member who takes his job seriously, as most of them do, finds twenty-four hours too short a time to do all that the day brings him. Committee meetings, caucuses, the preparation of measures and the study of those prepared by others, visits or messages from his constituents, the advances of lobbyists of one variety or another, the numerous informal conferences that attend the process of legislation, plus the regular routine of the daily sessions all make up a sum total of work which it seems that no man could accomplish, yet many attempt it and succeed to some degree.

But despite all of the good intentions and all of the honest effort that are devoted to the work of the Legislature, it must be admitted that the lawmaking branch of our government, judged by its fruits, falls far short of even that degree of perfection to which man's institutions may attain. "Freak" legislation is by no means uncommon. Still more common is the enactment of laws that fail utterly to accom-

plish the purpose for which they were proposed. Such failures may be due either to mistaken policy or to an inability to see how a law, theoretically correct, will work in practice. It is no uncommon thing for one Legislature to be confronted with the necessity of repealing or amending an act of its immediate predecessor. Other measures which may be entirely wise and expedient in their policy are marred by careless or inexpert drafting. Some of the errors due to this cause are quite amusing. The state examiner and inspector has been referred to as the "examiner and suspector."[6] In 1915 an appropriation was made for the purpose of equipping "immediate sleeping quarters" at the state school for the deaf.[7] All honey offered for sale within the state must be labeled imitation unless it has been "home-made by bees."[8] Admission to the Confederate Soldiers home is open to those who "enlisted and served in the Army and Navy of the Confederate States of America during the Civil and during the World War in 1917 and 1918."[9] More serious are those faults which come, not from technical errors in language, but from a failure to choose means appropriate to the end which the law is to accomplish. Many of our statutes are entirely inoperative, or worse, operate ineffectively and perniciously, simply because of unskilled preparation.

Another very prolific source of popular distrust of the Legislature is the amount of time devoted, both by individuals and by groups, to playing "politics." In the best sense of the term politics—the attempt to put a certain governmental program into effect, or to crystallize that program in the form of an issue to be supported or rejected by the people—is a necessary and useful part of democratic government. When it is perverted into principleless maneuvering for partisan advantage, or into a system of barter by which local or special interests are set off against each

[6]Revised Laws 1910, Sec. 8119.
[7]Session Laws 1915, Chap. 204.
[8]Revised Laws 1910, Sec. 6932.
[9]Session Laws 1919, Chap. 196.

other, it is fatal to good legislation. That is precisely what occurs in Oklahoma. The attitude of members toward measures of major importance is determined by their party tie; the attitude of the party is determined by the stand taken by its opponent and by its own estimate of popular sentiment; once that attitude is determined, the party's legislative program tends to become a series of attempts to win public approval for that attitude and to put the opposition in as unfavorable a light as possible. The merits or demerits of any legislative proposal must be subordinated to this program. With regard to measures that do not have an aspect of political importance, the practice of "log-rolling" holds sway. Representatives of districts possessing public institutions form a league, offensive and defensive. Members who propose local or special bills exchange votes and influence. Even the most conscientious legislators seem to feel little compunction about voting for bills with which they have no sympathy just because the author is a "good fellow" whose feelings ought not to be hurt, or because previous support of their own pet measures has imposed upon them an obligation to respond in kind. In all this traffic the interests of the people, whose agent the Legislature is supposed to be, receive scant attention. Small wonder, then, that the product is so often detrimental to the state.

Finally, the Legislature has failed to face the vital problems of the state and to attempt their solution. Legislation relating to subjects that have been topics of public discussion, that seriously affect the economic or moral welfare of the state, is either not attempted at all, is lost in the maze of legislative procedure, or passes one house only to fail in the other. Bills for increasing the salary of county treasurers, for establishing a session of the county court at some ambitious town, or for making some minor change in the existing statutes have a good chance to become the law of the land. Remedial or constructive legislation of real importance, however, is very unlikely to receive serious consideration, still less likely to be considered favorably. Yet responsibility to the electorate for this dereliction of

duty is not enforced. Talk as we may about the rule of the people, there seems to be no necessary connection between what the people wish enacted and what the Legislature actually enacts. Experience of such legislative impotence or inertia accounts to a large degree for the popular contempt of lawmakers.

"Freak" or unwise legislation; imperfect drafting of laws, both as to form and substance; partisan politics and legislative bargaining; irresponsibility, weakness and evasion of vital issues: these are the sins of the Legislature of Oklahoma. What are their causes; how can they be remedied? As a matter of fact, responsibility for this condition can be traced to no single cause; it is the joint product of many and diverse influences. These influences may be summarized, however, as consitutional limitations, poor organization and inferior membership.

Causes for Poor Legislation

The imposition by the Constitution of an excessive amount of limitations upon legislative action tends to break down that body's efficiency. These limitations reduce the area over which the Legislature may exercise authority, and therefore reduce its power to deal effectively with problems as they arise. By throwing the doubt of unconstitutionality over every law, they hinder efficient enforcement of such legislation as is passed. Finally, by reducing the power of the Legislature, they make a seat in that body unattractive to many men of ability, and thus reduce the caliber of its membership. It is to be hoped that in framing our next Constitution we shall return to first principles, make that document an instrument broadly organizing the structure of the government and guaranteeing such rights as are deemed fundamental, and leaving to the Legislature its proper task of detailed lawmaking.

Much of legislative inefficiency is due to poor organization. The reduction of compensation after the first sixty days of the session have elapsed results in a practical limitation upon the length of sessions. Sixty days in every

two years is no adequate time to be devoted to the consideration of laws for a modern American state. The first thirty days are given over almost entirely to the introduction and preliminary consideration of measures. Approximately one thousand bills—an average of seven for each member—are introduced in each session. Many of these are hastily and carelessly drawn, necessitating careful revision if they are to be made laws. The really important work of the Legislature, the actual grinding out of legislation, is done in the last month, and by far the greater amount is done in the last ten or fifteen days. This results in hasty, ill-considered legislation, and is responsible for many mistakes in technique and policy. Cumbersome legislative procedure, by requiring members to pass through a long stage of apprenticeship and by offering numerous opportunities for mistakes or wilful delay, adds its contribution to legislative inefficiency. Moreover, the bicameral form of organization encourages partisan politics and irresponsibility. Each house attempts to shift the responsibility for unpopular action or inaction to the other. As a matter of fact, the voter, with two plausible explanations of the situation urged upon him, becomes bewildered and is unable to decide who is to blame. The difficulty of enforcing responsibility is increased by the fact that the elections occur ordinarily a year and a half after the adjournment of the previous session, by which time the issues there raised have been forgotten or are but dimly remembered.

Finally, it must be admitted that the quality of the personnel of our lawmaking body is not as high as it should be. Democracy at its best calls for the supervision and control of the general policy of the government by the people; it also demands that the people shall entrust the detailed work of legislation necessary to put that policy into effect to representatives who are the intellectual and moral leaders of the state. The truth is, however, that in Oklahoma the Legislature is neither below nor above the general level of the citizenship. This means that we entrust legislation—a task which requires the highest degree of intelligence and of character—to a body which is of only average

grade in these characteristics. It is probable that only one-third of the members of any session are really efficient legislators. These form the leaders of the assembly, but being in the minority their leadership is hampered and curtailed by the less able members. This shortage of able members may be traced to several causes. Constitutional limitations and infrequent and abbreviated sessions have, as we have seen, reduced the power of the Legislature to deal effectively with the state's needs. Membership in such a body does not appeal to men of ability and ambition, and they do not become candidates unless impelled by an exceptionally well-developed sense of public duty or by a hope of using the office as a means to political advancement. The low salary makes service in the Legislature a financial sacrifice, and keeps out many desirable men. The smallness of legislative districts also plays an important part in reducing the caliber of the membership by facilitating the election of mediocre candidates who would be eliminated automatically by their obscurity if legislators were chosen from larger districts. Moreover, the large number of new members in every Legislature reduces the general quality of the whole. Experience makes a fair legislator good, and a good legislator better, yet reelection is the exception, not the rule. In 1911, only 17 per cent of the members of the House of Representatives had served in previous sessions. In 1917, 1919, and 1921, the percentages of experienced men were 24, 39 and 27, respectively. Over half of the members of the House at every session are serving their first term in any legislative body. The Senate contains more experienced men, partly because half of the members have held over from the previous session, partly because reelection of senators is more common and partly because members of the House are frequently "promoted" to the Senate. The fact that the Senate is slightly more efficient than the House is chiefly due to the greater legislative experience of its members.

The rehabilitation of the Legislature, therefore, depends not upon one but upon many factors. Because the task is so complex, because it involves the change of many things

which we have come to regard as politically sacred, it will be difficult, but because the Legislature is the living soul of the entire governmental organization the task must be attempted.

A Unicameral Legislature

An essential step is to abolish all but the most fundamental constitutional restrictions on legislative action, to remove from the Constitution all elements of a temporary or non-essential character. A legislative reference bureau should be established to aid legislators in the formulation and the technical perfection of bills. Legislative procedure should be reformed and simplified. Finally, a fundamental change should be made in the organization of the Legislature itself. The bicameral system should be abolished in favor of a single chamber. The advantages claimed for the bicameral legislature are the representation of different interests in the two houses and the checking of hasty and ill-considered legislation. We have no special interests that require particular and distinct bases of representation in Oklahoma, and if we did have them, the present bicameral organization, in which the constitution of the two houses differs only in length of term, size of electoral districts and a four years variation in the age required for membership, is not adapted to such representation. The reputed merits of a second house as a checking and revising body have not been apparent. Where, as with us, the two houses are elected upon practically the same basis, they tend to act alike, if controlled by the same party; if opposing parties control, the result is deadlock, not revision, while the people find it impossible to enforce responsibility for the deadlock because they cannot tell who is to blame.

It seems desirable that in Oklahoma the Legislature should consist of about fifty members elected from twenty-five districts. The legislative terms should be fixed at four years, one-half of the members retiring every two years. Their compensation should be fixed at a sum commensurate with the importance of the office, not less than one thousand

dollars per year, and provision should be made for annual meetings with no limit upon the duration of the session. Such a body would be small enough to be efficient, yet large enough to secure the representative quality which is essential to a legislature. Election from fewer and larger districts than at present and the payment of a more adequate compensation would insure the selection of abler men upon the average. Half of the members would always have had previous legislative experience because of the use of the "holdover" principle. The presence of abler and more experienced men would decrease the tendency to play petty politics. An objection to providing for "holdover" members is that it might delay the retirement of members whose legislative record did not meet with popular approval; but since such retirement would be delayed for only a short time, it does not seem to overbalance the value of retaining experienced men. Increased frequency of legislative sessions would mean the adaptation of the law to changed needs as they became manifest, while fixed and adequate compensation for time spent at sessions would do away with the present tendency to "steamroll" necessary business and finish the session as soon as possible after sixty days have elapsed. The unicameral legislature would be more efficient because the process of lawmaking would be cut in half and friction between the two houses eliminated; it would be more responsible to the people because they would have only one house to watch instead of two as at present, and the blame for unwise or vicious legislation would rest squarely upon that house.

Relationship Between Governor and Legislature

In outlining the above suggestions for reorganization of Oklahoma's legislative department, no mention has been made of the relationship between the Governor and the Legislature. It has been assumed that the people wished to continue the present independent status of the legislative and executive departments. However, this separation is very undesirable from the standpoint of administration. It

is likewise a contributing factor in some of the outstanding failures of our legislative system. The fact that these two branches of government are independent, each deriving its authority directly from the people, creates friction between them and increases the likelihood of political by-play at the expense of good government. Lack of legislative leadership has been another cause of inefficient lawmaking. Good laws cannot be framed overnight or by well-meaning amateurs; they require expert knowledge and careful drafting. The Governor, because of his position as head of the state administration, because of his ability to command expert technical information and assistance, is preeminently in the best position, if otherwise qualified, to make legislative plans. But plans, no matter how well-drawn, must be transmuted into law before they are of any benefit to the state, and so long as the legislative and the executive branches of government remain separated there is no method by which the Governor's plans are very likely to be made into law. His messages are listened to perfunctorily, and religiously forgotten. He has no right to introduce bills, and if he had, legislative jealousy of "executive domination" would for the most part doom them to an early death. Legislative irresponsibility is fostered by the fact that the power of veto is vested in an independent branch of the state government. The exercise of that power, actual or threatened, furnishes an excellent way of explaining to the folks back home, the failure of popular measures.

If the Governor were elected by the Legislature from its own membership and held accountable to it for the proposal of governmental policies and for the manner in which those policies were carried out, if in other words a responsible form of government were established, these evils would be largely eliminated. Important legislative plans would for the most part emanate from the administration and would therefore be much better, both in form and in substance, than is usual today. Complete democratic control would be retained since the representatives of the people would be vested with all of their present power to discuss, amend,

accept or reject, proposed legislation and would be strengthened by the fact that legislators could no longer present the Governor's opposition as an excuse for inaction to their constituents. Deadlocks between the Governor and the Legislature would cease, for a "break" over an important matter of policy would result in the choice of a new executive, or in a dissolution of the Legislature and an appeal to the people on the part of the Governor. In either case, harmony between the branches would be the eventual result. A further advantage would be that, if the Legislature were the road to the governorship, more men of ability and ambition would seek places in that body, and thus raise the standard of its average membership. Incidental benefit would result from the elimination of the present statewide primary and general elections for the governorship, with their costly campaigns, all too frequent "mud-slinging," and temptation to political irregularities, which to a large extent, discourage political ambition in men of moderate means or high ideals.

Thus this recasting of the relationship between the legislative and the executive departments of our government offers many advantages. The possible arguments against it seem on examination to be either untenable or negligible in comparison with the advantages to be gained. It does not afford opportunity for governmental tyranny and encroachment upon individual rights. The most efficient safeguards against such evils are a vigilant popular control of the government, and fundamental constitutional limitations enforced by an independent judiciary. Opportunity for exercising the first of these is amply secured by popular election of the legislators, while the latter is entirely consistent with a government organized on the responsible system. As has been pointed out, such an organization is entirely democratic, for the final responsibility for the government rests in the hands of men chosen directly by the people.

DIVISION OF LATIN-AMERICAN AFFAIRS

EDITED BY IRVIN STEWART

University of Texas

THE CONTROVERSY OVER TACNA AND ARICA AND THE WASHINGTON CONFERENCE[1]

ETHEL M. CRAMPTON

Washington, D. C.

The treaty of Ancon, 1883, which put an end to the war between Peru and Chile, commonly known as the War of the Pacific, stipulated the cession to Chile of the Peruvian province of Tarapaca in perpetuity and the cession of the provinces of Tacna and Arica for ten years, at the expiration of which a plebiscite was to be held to determine whether they desired to stay under the control of Chile or to pass again under the sovereignty of Peru.

Unfortunately, the treaty did not establish the rules and the form in which the plebiscite should be conducted; and when ten years had elapsed the parties could not agree on a method of procedure. The Chileans insisted upon having control of the voting and that the Chileans who had taken up residence in the two provinces in recent years, should be entitled to vote. The Peruvians, on the other hand, would not accept either of these conditions and contended that only the native population from Tacna and Arica should have a voice in determining the disposition of these provinces.

Arbitration by the King of Spain was proposed by Peru in the Billinghurst-Latorre protocol in 1898, of the ques-

[1]In an earlier article Professor Herman G. James sketched the history of this controversy from its beginning to March, 1920. The purpose of this paper is to bring the data relating to the subject down to date, keeping in mind Professor James' statement, "The purpose of this presentation is informational, not argumentative." (See *Southwestern Pol. Sci. Quarterly*, Vol. 1, No. 2, Sept., 1920, pp 155-169.)

tions: Who shall vote? Shall the voting be public or secret? Chile, however, refused to agree to the arbitration.

The diplomatic discussion of these matters dragged along for twenty-seven years. The situation culminated in Peru's breaking off diplomatic relations with Chile in 1910. In 1912, the Government of Peru accused Chile of "Chileanizing" the disputed provinces through the persecution and expulsion of the Peruvian elements and the closing of Peruvian schools and the suppression of Peruvian newspapers. This the Chilean government denied. The proposal was also made in the convention of 1912 that the plebiscite be postponed until 1933.

When the World War ended, Peru submitted the case to the League of Nations at its first session; and Bolivia, which had become a third party to the dispute, also introduced it at the second session of the League. Consideration of the question by that body was opposed by the Chilean delegation because it constituted a purely American problem, and it was finally referred to a committee.

Bolivia, which, as the ally of Peru, had been defeated in the War of the Pacific, failed to conclude a treaty with Chile until 1904. By this treaty she ceded to Chile the province of Antofagasta and this left her without an outlet to the sea. When the Versailles treaty was signed, Bolivia, pointing out the cases of Poland and Jugoslavia, asked the signatories to the treaty that Arica be given to her in order to provide her with a port to the Pacific. Both Chile and Peru opposed this; and as a countermove Bolivia turned around and denounced the treaty of 1904 and demanded the restoration of Antofagasta.

The legal and diplomatic situation remained substantially unchanged except that relations became more estranged and it was rendered more intense by the withdrawal of Peruvian consular agents in 1918, until December 12, 1921, when the Chilean foreign minister, Senor Ernesto Barros Jarpa, took the unusual step of dispatching a note directly to the Government of Peru, inviting it to participate in a plebiscite as provided for in the treaty of Ancon. Peru replied,

refusing to go to the plebiscite twenty-eight years after the date fixed, and suggested that the whole question of the Southern Pacific be arbitrated by the United States. Chile in reply did not directly refuse arbitration, but invited Peru to continue direct negotiations, and an interchange of diplomatic notes ensued with the result that, after the exchange of a half dozen notes, Chile had indicated her willingness to submit to the arbitration of the United States the manner in which the plebiscite, provided for in Clause III of the treaty of Ancon, should be held. Peru, on the other hand, contended that the plebiscite formula was no longer tenable, owing to the lapse of time and the wholesale deportations of Peruvians, and, therefore, urged that, instead of confining arbitration to the question proposed by Chile, the entire controversy be handed over to the decision of some arbitral tribunal.

In the meantime, Bolivia had approached the governments of both Peru and Chile through diplomatic channels, proposing a tripartite arbitration wherein Bolivian claims would be considered along with those of Peru and Chile. Chile refused the Bolivian request. Peru, on the other hand, advised Bolivia that the proposal was entirely satisfactory, providing the agreement of Chile to a tripartite could be secured. At this point the President of the United States sent an invitation to Chile and Peru to appoint representatives to meet in Washington for the purpose of considering their problem in direct conference.

Negotiations leading to the Washington Conference were opened by a telegram directed by the Chilean Minister of Foreign Affairs to the Peruvian Government on December 12, 1921. In his message Senor Barros Jarpa recalled the provision of the Convention of 1912 according to which the plebiscite was to be postponed until 1933. "But," said he, "such postponement was equivalent to the maintenance in America, in latent form, of a cause of possible international conflict, obliging Peru and Chile, and perhaps other countries, to burden themselves with heavy expenses for military preparations in these moments when the great

changes brought about by the World War invite the nations of this continent to dedicate their best efforts to the development and increase of their natural riches." The fact that Chile exercised its sovereignty over Tacna and Arica according to the treaty of Ancon, said he, would make it advantageous for her to postpone the plebiscite in view of the natural increase of her interests in the course of years; but she was ready to accept a nearer date for the plebiscite than 1933. She, therefore, invited Peru to carry into effect the proposal of 1912.

Peru's reply, dated December 17, 1921, expressed surprise at the receipt of a direct telegraphic communication from Chile in view of the following facts.

1. That diplomatic relations between Chile and Peru had been interrupted since 1910.

2. This rupture had been made more serious since 1918 by the withdrawal of the Peruvian consular agents, due to violent persecution and wholesale expulsion of Peruvians resident in the territories of Tacna, Arica, and Tarapaca. Peru had good reason to suppose that, within the diplomatic practice to which all countries are subject, a means of renewing the conventional diplomatic relations would have been sought.

3. The method of the plebiscite was regulated in the protocol of April 16, 1898, which was approved by the Peruvian Congress and the Chilean Senate. Peru could not now sanction the protocol inasmuch as the greater part of the stipulations of the treaty had been violated by Chile.

4. Chile had asserted that the bases of her proposal to Peru in 1912, namely, a postponement of the plebiscite until 1933; the election board to consist of five delegates—two Chileans, two Peruvians, and the Chief Justice of Chile, presiding; all natives and all those resident for three years in the territory who could read and write to be allowed to vote, were inspired by principles equal to those established for plebiscitary acts contemplated in the Treaty of Versailles. In the latter acts the first care was to safeguard the liberty of the ballot in respect to the authority which should guarantee it, its execution and its canvass; whereas,

even after the wholesale expulsion of the Peruvian population and the claim that the plebiscite be held under Chilean direction, the Chilean authorities in Tacna, Arica and Tarata had for over a month been busy inducing the inhabitants of all nationalities resident in those Peruvian provinces to sign printed blanks containing an agreement to vote in Chile's favor for the definite annexation of those territories.

Señor Salomon, Secretary of Foreign Affairs, again expressed Peru's desire to come upon a just solution of the Pacific question. At Geneva Chile had refused to deal with the difference between Chile and Bolivia on the grounds that they constituted an American problem. In harmony with this criterion, Peru now invited Chile to submit jointly the whole question of the Southern Pacific to the arbitrament of the Government of the United States of America.

Chile's second note to the Government of Peru, December 20, 1921, replied that direct communication had been sought because all worthy means of seeking a settlement of her difficulties with Peru had been deemed useful and proper, and that there had been attributed to Peru the same generous and frank desire to solve the pending difficulties that moved the Chilean Government. It was recalled, furthermore, that in 1920, when the Chilean Government sent to Lima an ex-minister of foreign affairs, hoping to renew the interrupted relations, that he was not fortunate enough to be received by the President of Peru, His Excellency, Señor Leguia. At the same time, Chile indicated her refusal to submit for arbitration the entire question of the Treaty of Ancon.

In reply, December 23, Peru brought forward a statement of the expulsion of Peruvians from Tacna, Arica and Tarapaca, of the burning of property in Pisaqua and Iquique and of the incorporation of the borax region of Chilcaya in the territory permanently ceded to Chile, notwithstanding the judgment of experts, judges and the Chilean courts that it belonged to Arica. "With such antecedents," the message reads, "which have most deeply wounded the national spirit, all direct understanding between Peru and

Chile has become impossible." Peru repeated her request that all questions arising out of the violation of the treaty of 1883 be subjected to arbitration, disagreeing with Chile that only Clause 3 of the Treaty of Ancon was in dispute; for the very reason that disagreement existed as to *what* should be the subject of arbitration, therefore the entire question should be the subject of arbitration.

The third telegram was directed by Chile to the Peruvian Government on December 26, 1921. It suggested that in the course of direct conversations misunderstandings would disappear which at present opposed themselves to the complete renewal of commercial and political relations between the two nations. Only to long diplomatic controversy and to unfounded jealousy and suspicion were due the charge of Chile's having broken several clauses of the treaty of 1883; and doubtless this suspicion could be dissipated by the contact of plenipotentiaries in Washington, since evidence could be produced sufficient to prove that it resulted only from an atmosphere of animosity. "The treaty of 1883, called by the Peruvian Minister to Chile in 1908, His Excellency, Señor Seoane, 'the force of international law' will be carried out by my government in all its parts," said Señor Barros. Accordingly, a mission should be appointed by Chile in accord with that accredited by the Peruvian Government, that a settlement of the pending difficulties might be reached.

To this note the Minister of Foreign Affairs for Peru replied on December 28 that his government did not propose to negotiate directly in Washington merely in order to arrive at an agreement on the differences concerning the plebiscite only, nor to renew direct discussions on a matter so long treated in this manner without success. On the contrary, the proposal was reiterated for *complete* arbitration, jointly and solemnly, with representatives from Chile, of the treaty of 1883. Furthermore, it was proposed that simultaneous telegraphic messages be sent to the American Government asking consent to hold the conference in Washington with the President of the United States as arbiter.

The fourth and last telegram sent by Chile on December 29, 1921, recalled the fact that by the Treaty of Ancon

Tarapaca had been assigned to Chile in perpetuity and unconditionally and that the ultimate dominion and sovereignty of Tacna and Arica should be submitted to a plebiscite. The telegram then went on to recount how these three items were not in the treaty and should not be remembered as if they were. The plebiscite had not been held although the governments interested had arrived at an agreement with respect to its bases and essential characteristics. Regret was expressed that Peru had indicated that "Full arbitration" was the only means of reaching an agreement, so that thirty-six years after its occurrence, the result of the War of the Pacific was to be submitted to arbitration. Peru had, therefore, refused the invitation of Chile to arrive at a friendly solution of the form of the plebiscite, offering in exchange a "Full arbitration" which to the Chilean Government seemed impossible from its very vagueness. Therefore, the Chilean Government would cease to consider further plans for a settlement by arbitration.

To this communication the Peruvian Government replied on December 31, defending its proposal that all the questions at issue be submitted to arbitration on the ground that the untold horrors of the War of the Pacific still kept alive in the minds of the Peruvians the unjust peace which had ended it. Doubt was thrown upon the zeal and sincerity of Chile by a historical survey of the events occurring in the province since 1883. The Government of Peru asserted that it did not claim that the results of the War of the Pacific, ended thirty-seven years previously, should be submitted at this time to arbitration. The infractions on the part of Chile of that treaty which she imposed by force and which were only carried out should be settled.

In the interval between the first and second Chilean notes, summarized above, namely, on December 20, 1921, Bolivia had addressed a telegram simultaneously to Chile and Peru, asserting her right to a part in a just settlement of the peace of 1883 which had deprived her of her seaport. She claimed that by Article XIX of the Treaty of Versailles, she should be given consideration in any final settlement

of the case. To this the Government of Chile promptly replied that Bolivia was not concerned in the questions at issue between Peru and Chile. Peru, on the other hand, replied on December 24, that if the consent of Chile could be obtained to a tripartite arbitration, Peru would welcome Bolivia as a party to the conference.

To Chile Bolivia sent a reply[2] which conceded that only Peru and Chile were parties to the treaty of 1883; nevertheless, Bolivia had been deprived of her fundamental rights by that treaty, and any settlement of the case by arbitration must concern that state. An international conference was proposed where justice might be meted out to the three nations concerned.

Four days later Bolivia replied to Peru urging again the necessity of including consideration of the question of her right to a port on the Pacific in any settlement of the Chilean-Peruvian controversy and expressing gratitude for the cordiality with which the Bolivian overtures had been received.

Up to this point the American Government had made no official move although informed of and watching the progress of the negotiations with the deepest interest. It was not until January 18, 1922, that the United States made the first move. Secretary Hughes then sent a telegram to both Chile and Peru stating that the Government of the United States had noted with great pleasure the elevated spirit of conciliation which had animated the governments addressed and also the fact that representatives of both governments would be nominated to meet in Washington with the object of finding a means of solving the difficulties which separated the two countries. Ten days later Bolivia requested that the United States recognize her right to participate in the conference by extending to her an invitation to send a properly accredited delegate. January 29 President Harding replied that the United States was merely acting as host to the two countries involved in the discussion, and that it was not within his province to admit Bolivia.

[2]December 24, 1921.

Acceptances were dispatched from Chile and Peru and the date of the Washington Conference was set by the United States for May 16, 1922.

At the opening of the conference, Secretary Hughes, who acted as chairman pending the election of a presiding officer, opened the conference with these words: "The only relief for a troubled world is to resort to the processes of reason in lieu of those of force. Direct and candid interchanges, a sincere desire to make an amicable adjustment, the promotion of mutual understanding and the determination to avoid unnecessary points of difference in order that attention may be centered upon what is fair and practicable—these are the essence of the processes of reason."

The Honorable Luis Izquierdo, Chilean delegate, replied: "The Government of Chile, Mr. Secretary, lost no time in complying with the generous inspiration of your government, and I may add that it did this, inspired by a high spirit of international conciliation, which I hope and confidently expect will be reflected in our deliberations. Convinced that our distinguished colleagues, the representatives of Peru, are inspired by the same sentiments that animate us, we entertain the hope that the present conference will re-establish cordial relations between the two sister nations." He referred to the purpose of the Washington negotiations as an effort to make effective the unfulfilled provisions of the Treaty of Ancon.

Señor Meliton Porras, delegate from Peru, paid a sincere and enthusiastic tribute to the American nation and expressed the hope that the results of its initiative might be proportionate to its high ideal. He defined the Washington Conference as one designed to end "the controversy of the Pacific."

As the conference met it was announced at the State Department to be the definite policy of the United States to act only as an accommodating host to the conference, until the

conference members should formally request direct aid in composing their differences.[3]

There was some speculation on the part of the interested public as to the outcome of the conference, owing to the fact that a report had been circulated in both Chile and Peru to the effect that a secret advance agreement already had been reached by the two governments whereby the provinces were to be divided, the one going to Chile, the other to Peru. Such a storm of protest arose in both countries that each foreign minister had not only to deny the reports but to pledge that under no circumstances would a foot of the provinces be given up.

Bolivia, as indicated above, having been denied representation in the conference, sent nevertheless an official observer to the meeting, who presented a last formal request for admission to the respective delegates through the Bolivian minister. The delegates, however, replied through the diplomatic representatives of their countries that they were not empowered to admit Bolivia to the discussion and so Bolivia remained unrepresented.[6]

A commission of native Tarapacans also presented a memorial to President Harding declaring that the validity of the Treaty of Ancon had been destroyed by Chilean violations; that the session of Tarapaca to Chile was made without consulting the will of its inhabitants, but against their will; and that Tarapaca, not having been an object of the dispute which caused the war, it could not legally be transferred to Chile by the treaty which concluded the war.[7]

For two weeks the conference debated and the question was still undecided whether the arbitration should be a

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[3]The only open records of the conference from the first plenary session to the final meeting are the newspaper accounts. The official record, a copy of which is at the Pan-American Union, is not accessible for consultation until both Peru and Chile have at least ratified the protocol and supplementary act.

[4]*Christian Science Monitor*, May 12, 1922.

[5]*Washington Post*, May 16, 1922.

[6]*New York Times*, May 19, 1922.

[7]Ibid.

judicial or a political one, i.e., whether, as Chile maintained, a plebiscite should determine the possession of Tacna and Arica; or, as Peru still asserted, the failure to hold a plebiscite in 1894 had nullified Chile's claim to the provinces. A diplomat remarked that the quarrel over the provinces reminded him of two bald-headed men fighting for the possession of a snaggle-toothed comb.

By June 1 there had emerged from the pourparlers, three proposals for settlement by arbitration: namely, by the United States alone; by the United States and Argentina and Brazil, jointly; and by the United States and either Argentina or Brazil.

By the middle of June negotiations had reached an *impasse*.[8] Ambassador Mathieu of Chile laid before Secretary Hughes a note saying that the rock on which the negotiations had stranded was the stipulation in the Treaty of Ancon to hold a plebiscite to determine the nationality of the two provinces of Tacna and Arica. Chile was willing to submit to arbitration by the United States only the question of the "fixation of conditions" for the plebiscite. Peru was willing to abide by the arbitral decision of the United States as to whether a plebiscite should be held at all or not. The appeal was made to the United States to come to the aid of the conferees.

Under these circumstances it was the good fortune of Secretary Hughes to suggest a compromise acceptable to both Chile[9] and Peru,[10] which later appeared in the protocol. Peru, however, suggested an additional reservation, to the effect that if the arbiter mentioned therein decided that no plebiscite should be held and Chile and Peru could not decide the sovereignty of the provinces by direct negotiations, both countries should request an exercise of the "good offices" of the United States. Secretary Hughes suggested also the wording of that clause in the supplementary act which pro-

[8] *New York Times*, June 17, 1922.
[9] Ibid., June 24, 1922.
[10] Ibid., July 7, 1922.

vides that during the negotiations the administrative organization of the provinces shall not be disturbed.

On July 21 in a final plenary session the protocol and supplementary act, as given below, were signed by the delegates from the participating nations.

PROTOCOL OF ARBITRATION

"Assembled at Washington, D. C., pursuant to the invitation of the Government of the United States of America, for the purpose of arriving at a settlement of the long-standing controversy, with respect to the unfulfilled provisions of the Treaty of Peace of October 20, 1883, the Republic of Chile and the Republic of Peru have for that purpose named their respective plenipotentiaries, that is to say:

"Don Carlos Aldunate and Don Luis Izquierdo, Envoys Extraordinary and Ministers Plenipotentiary of Chile on Special Mission; and

"Don Meliton F. Porras and Don Hernan Velarde, Envoys Extraordinary and Ministers Plenipotentiary of Peru on Special Mission; who after exchanging their respective full powers found to be in good and due form, have agreed upon, and concluded the following articles:

"Article 1° It is hereby recorded that the only difficulties arising out of the Treaty of Peace concerning which the two countries have not been able to reach an agreement, are the questions arising out of the unfulfilled provisions of Article 3° of said Treaty.

"Article 2° The difficulties referred to in the preceding article, will be submitted to the arbitration of the President of the United States of America, whose decision shall be final. The arbitrator shall give both parties opportunity to be heard, and shall take into consideration such arguments, evidence, and documents as may be presented. The arbitrator shall determine the periods within which the arguments, evidence and documents shall be presented, and shall determine all questions of procedure.

"Article 3° The present protocol shall be submitted to the approval of the respective governments, and ratifications exchanged at Washington, D. C., through the intermediary of the diplomatic representatives of Chile and Peru, within the maximum period of three months."

Supplementary Act

"In order to determine with precision the scope of the arbitration stipulated in Article 2° of the protocol signed on this date, the undersigned agree to place on record the following points:

"1° The following question, presented by Peru at a session of the conference held May 27 last, shall be included in the arbitration:

"In order to determine the manner in which the stipulation of Article 3° of the Treaty of Ancon shall be fulfilled, it is agreed that there shall be submitted to arbitration the question whether, in the present circumstances a plebiscite shall or shall not be held.

The Government of Chile may submit to the arbitrator such arguments in opposition as may be deemed appropriate for the defense of her rights.

"2° In the event that the decision is in favor of the holding of a plebiscite, the arbitrator shall have full power to determine the conditions for the holding of such plebiscite.

"3° Should the arbitrator decide that a plebiscite shall not be held, both parties agree, upon the request of either of them, to enter upon a discussion of the situation created by the decision of the arbitrator.

"It is understood, in the interest of peace and good order, that in this event and pending an agreement as to the disposition of the territory, the administrative organization of the provinces shall not be disturbed.

"4° In the event that no agreement is reached as a result of the above mentioned discussion, the two governments will request the good offices of the Government of the United States, in order that an agreement may be reached.

"5° It is agreed that pending claims relative to Tarata and Chilcaya are also included within the arbitration, in accordance with the final disposition of the territory, as referred to in Article 3° of said treaty."

The Protocol was ratified by the Congress of Peru on September 14, 1922. Similar action on the part of the Congress of Chile is expected daily.

In his closing address, Secretary Hughes said, "It is easy to talk of the prevention of war, but inevitably there will be differences and serious controversies, and if these are not to be settled by force, there must be peaceful solutions which can be had only through the efforts of governments which determinedly seek peace to make it possible by providing for the contacts of honorable and peaceful men, whose ability, ingenuity and wisdom will be utilized not to devise grounds for continuing differences but practical bases of agreement."

By means of this conference and by these two instruments, resulting therefrom, it would seem as if this controversy, now nearly half a century old, were in a fair way to reach a peaceful settlement.

NEWS AND NOTES

ARGENTINA

Public school teachers are fostering a movement to compel the well-to-do classes to contribute to the clothing, food, and school material of children of the poorer element in order that the latter may secure the benefit of primary instruction.

The territory of El Chaco in Northern Argentina is to be the new home of a group of Mennonites seeking to establish a community in accordance with their views on freedom of worship.

An unofficial census of the physicians of the country shows the total number to be approximately five thousand, or an average, roughly, of one physician for two thousand inhabitants.

Work on the international railroad between Argentina and Bolivia is being pushed rapidly to completion.

A bill recently before the Argentine Congress for its consideration had as its object the establishment of a wide range of causes for divorce. Included among these were: infidelity, attempt by one spouse against the life of the other, imprisonment of one for more than five years, prostitution or corruption of the children, cruelty, insanity lasting for more than three years, contagious diseases, alcoholism, and the vice of gambling.

An active publicity campaign among the lower classes conducted by the Health Bureau has resulted in a large proportionate decrease in the number of cases of contagious diseases.

On his way to Buenos Aires from Paris President-elect Alvear was entertained by the King of Spain. Very cordial relations between the two countries are indicated by the character of the speeches exchanged between the two officials.

BRAZIL

When close returns in the presidential race between Dr. Arturo Bernades and former President Nilo Pecanha indicated the former as successful, adherents of the ex-president protested. The proposal for a Court of Honor submitted by the followers of Dr. Pecanha was rejected; and when ex-President da Fonseca, a supporter of the unsuccessful candidate was imprisoned, there was a revolt among the garrison of Fort Copacabana, protecting the port of Rio. Upon the release of Mariscal da Fonseca the revolt was soon quelled.

The presidential message of Dr. Pessoa announced an unexpected falling off in the national revenues with a proportionate reduction of expenses.

In a message to Congress, the president has asked for a law prohibiting the sale to foreigners of land touching on the national frontiers.

CHILE

An agreement has been reached with Argentina for the construction of two additional transandean railways, the northern route to run from Salta in the interior of Argentina to the Chilean port of Antofagasta and the southern to connect the Chilean trunk line with the Argentine port of Bahia Blanca.

Chilean diplomatic representatives in Argentina and Brazil have been raised to the rank of ambassadors. Argentina has taken similar action with regard to her representatives in Chile, and Brazil also is expected to reciprocate.

Beginning in August, 1922, coastal trade was confined to ships flying the national flag, the action excluding several foreign companies.

The move on the part of the Chilean ambassador at Washington to have limitation of land armament placed on the agenda of the next Pan-American Conference has met hearty approval.

The Chilean-Peruvian conference called in an effort to reach some solution of the Tacna-Arica controversy met in closing session on July 22. The protocol and supplementary act entered into by the delegations of the two countries provide that the President of the United States shall determine whether or not a plebiscite shall be held and the terms of the plebiscite, if one is decided upon. If the decision is against the holding of a plebiscite, the two countries are to "enter into a discussion of the situation created by the decision of the arbitrator"; and in case no agreement is reached, the good offices of the United States are to be availed of. Each country is given a maximum period of three months in which to ratify the agreement.

COLOMBIA

Provision has been made for exchange professorships and an interchange of students between Colombia and Uruguay.

The Liberal Convention has proclaimed General Benjamin Herrera, recently its candidate for President of the Republic, as supreme director and chief manager of its destinies.

A Japanese corporation, Compania Colombo-Nipona, has been organized to present Colombian products in Japan and Japanese products and commercial propaganda in Colombia.

The German concern which has charge of the improvement of navigation on the Magdalena has its preliminary work well under way.

COSTA RICA

An abundant coffee crop plus high price for coffee on the London market resulted in a wave of prosperity. Because of lower prices in the United States, practically the entire crop was diverted to England.

CUBA

The resignation of several cabinet members following General Crowder's effort to secure a reduction of the Cuban budget, led to the formation of a new cabinet on June 16. Its personnel is:

Carlos Manuel de Cespedes, Secretary of State.
Colonel Manuel Despaigne, Treasurer.
Ricardo Lancis, Interior.
General Armando Montes, War and Navy.
Erasmo Reguciferos, Justice.
Captain Castillo Porkorny, Public Works.
Francisco Zayas, Instruction.
Dr. A. Agramonte, Sanitation.
Pedro Betancourt, Agriculture.

Several members of the new cabinet have held official positions in the United States.

The debt situation of the Republic is serious, the default on the service of the internal loan of 1917 amounted to $3,000,000, while the floating debt closely approximates the total annual receipts of the National Treasury. Coupled with apparently well founded charges of official graft, the financial condition of the country may be the occasion for another intervention on the part of the United States in the near future.

HONDURAS

The personnel of the new cabinet appointed on June 30 by President Gutierrez is:

General Salvador Cisneros, Minister of War.
Francisco Bueso, Foreign Affairs.
Jose Maria Guillen Velez, Interior.
Fredrico C. Caneles, Education.
Marcial Lagos, Development.
Trinidad E. Rivera, Finance.

MEXICO

In accordance with its agrarian policy the federal government has expropriated almost 2,000,000 acres; and it is tak-

ing steps to protect the forests through the creation of a body similar to the United States Forest Service.

The Mexican Foreign Office has given its assurance that recent decisions of the Supreme Court established the fact that article 27 of the Constitution is not retroactive. Secretary of State Hughes, however, stated that this government could not regard those decisions as adequately protecting the rights of American owners in land held prior to May 1, 1917, but not developed before that date. Further affirmative action on the part of the Mexican government is necessary before recognition can be extended.

Initial returns from the congressional elections held July 2 indicated a great increase in the number of Obregon supporters in both houses. Since the results were announced, however, at least half of the seats in the Chamber of Deputies conceded to President Obregon's coalition or co-operative party have been contested.

Adolfo de la Huerta has announced that the Mexican government is planning a central bank of issue based on the Federal Reserve System of the United States. Fifty-one per cent of the stock will be taken by the government.

According to figures given out by the Mexican embassy in Washington the population of Mexico at the end of 1921 was 13,887,080 as against 15,180,359 in 1910. The decade of revolution is given as the reason for the decrease of 1,293,279.

The Mexican Government has entered a protest with the Department of State relative to the killing of two Mexican citizens and the beating of several others in connection with the mine massacre in Herrin, Ill.

On July 23, the chief of police of the Federal District broke up a Bolshevist parade in Mexico City.

President Obregon has signed the agreement entered into between Finance Minister Huerta and the representatives of the international committee of bankers. Congress is expected to ratify this solution which covers securities with

a face value of more than $500,000,000 on which the interest in arrears amounts to approximately $200,000,000. Agreement also has been reached with the heads of American oil companies operating in Mexico with regard to the taxes to be paid on oil produced by those companies.

PANAMA

An amendment to the constitution has been adopted by the Assembly extending the length of terms of the assemblymen from four to six years, thus doing away with the necessity for holding elections in September. The opposition party has petitioned the United States to pass upon the matter.

SANTO DOMINGO

The plan announced by Secretary Hughes as the basis for the withdrawal of the American forces has been accepted by Horace G. Knowles, counsel for the deposed constitutional Government. Mr. Knowles predicted the acceptance by the Dominician people of the plan which embraces the negotiation of a convention recognizing as binding certain acts of the American Military Government. The American forces are to be withdrawn upon the creation of a permanent government.

NEWS AND NOTES

EDITED BY B. F. WRIGHT, JR.
University of Texas

CONSTITUTIONAL AMENDMENTS IN TEXAS

IRVIN STEWART
University of Texas

Since the present constitution of Texas was adopted in 1876, twenty-two sessions of the legislature have met; and of these, twenty have proposed a total of ninety amendments to that constitution. Fifty-one of these amendments were defeated at the polls, while thirty-eight were being adopted; one, proposed by the Thirty-third Legislature was never submitted. General elections seem to have proved more favorable to constitutional amendment than special elections; for nearly two-thirds of the amendments submitted at general elections have been adopted, and over two-thirds of those submitted at special elections have been defeated. The figures for general elections are: thirty-two submitted, twenty-one adopted, and eleven defeated; and for special elections: fifty-seven submitted, seventeen adopted and forty defeated. As the table below indicates, the vote in general, has been small, even in proportion to the vote for governor in the same election. In terms of the qualified electorate, constitutional amendments usually have drawn from ten per cent to forty per cent of the total, the average ranging from twenty per cent to twenty-five per cent. Only two issues, those of prohibition and woman suffrage, seem to have made the popular appeal necessary to attract a large number of voters.

Different practices have been followed by various legislatures, the number of amendments submitted ranging from one to thirteen, and the number of elections held on the amendments being one, two, or three. One amendment, that increasing the salary of the legislators, has made an appeal to the legislature which has found no responsive

chord in the votes of the people; submitted seven times this amendment has been defeated every time. Confederate pension and taxation increases which also have been submitted on several occasions have met a more favorable reception.

The following tables briefly outline the history and fate of constitutional amendments from three different angles:

TABLE I

NUMBER AUTHORIZED BY EACH LEGISLATURE AND RESULTS

Legislatures authorizing one:
- Sixteenth—adopted.
- Twenty-sixth—defeated.
- Twenty-seventh—adopted.

Legislatures authorizing two:
- Seventeenth—defeated.
- Twenty-first—adopted.
- Twenty-third—adopted.
- Twenty-fourth—one adopted and one defeated.

Legislatures authorizing three:
- Twenty-eighth—adopted.
- Twenty-ninth—two adopted, one defeated.
- Thirty-fifth—adopted.

Legislatures authorizing four:
- Eighteenth—adopted.
- Thirty-first—adopted (two elections).

Legislatures authorizing five:
- Twenty-second—adopted.
- Twenty-fifth—one adopted, four defeated (three elections).
- Thirty-second—four adopted, one defeated (two elections).
- Thirty-seventh—one adopted, four defeated.

Legislature authorizing six:
- Twentieth—defeated.

Legislatures authorizing seven:
- Thirty-third—six defeated, one never submitted.
- Thirty-fourth—defeated.

Legislature authorizing nine:
- Thirtieth—one adopted, eight defeated (two elections).

Legislature authorizing thirteen:
- Thirty-sixth—adopted three, defeated ten (three elections).

TABLE II

CLAUSES OF THE CONSTITUTION ATTACKED
ARTICLE I

BILL OF RIGHTS

SECTION 10

Thirty-fifth Legislature (*1917*). *Adopted.*

Permitting the state and the defense in a suit for violation of the state anti-trust laws to introduce depositions of witnesses resident out of the state.

ARTICLE III

LEGISLATIVE DEPARTMENT

SECTION 1

Thirty-third Legislature (*1913*). *Defeated.*

Initiative and referendum upon petition signed by 20 per cent of qualified voters of state.

SECTION 24.

Seventeenth Legislature (*1881*). *Defeated.*

Eliminating clause providing a maximum of $2 for each day after the first sixty days of each session.

Twentieth Legislature (*1887*). *Defeated.*

Extending the $5 per day period to ninety days.

Twenty-fifth Legislature (*1897*). *Defeated.*

Providing for salary of $5 per day for the first 100 days of each session and $3 per day for the remainder of the session.

Twenty-ninth Legislature (*1905*). *Defeated.*

Changing salary to $1,000 for the first year, and $5 per day for every special session held during the second year; mileage 3 cents; acceptance of railroad passes, rebates, and other special privileges forbidden on penalty of forfeiture of office.

Thirtieth Legislature (*1909*). *Defeated.*

Changing salary to $1,000 for first year and $5 per day for each special session of the second year; 3 cents mileage.

Thirty-third Legislature (*1913*). *Defeated.*

Changing salary to $1,200 for the first year with $5 per day for every special session of the second year; 5 cents mileage; regular session to continue until all business is disposed of.

Thirty-seventh Legislature (*1921*). *Defeated.*

Changing salary to $10 per day for special sessions and the first 120 days of the regular session; and $5 per day after the first 120 days of the regular session; mileage 10 cents.

SECTION 40.

Thirty-sixth Legislature (*1919*). *Defeated.*

Permitting the legislature to authorize a $75,000,000 state road bond issue and to provide a 20 cent tax to discharge such bonds.

SECTIONS 49, 52.

Thirty-third Legislature (*1913*). *Defeated.*

49. Increasing the limit on debt for deficiencies in current revenue to $500,000; authorizing the legislature to issue bonds for the purchase of land and construction of buildings for the University of Texas and A. and M., the revenue from the permanent University fund being made available for interest and sinking fund; authorizing the legislature to issue bonds for the construction of buildings at state institutions; and secured by lien of the real property, for constructing buildings and making permanent improvements for the prison system.

52. Increasing the maximum of credit which might be extended by a political subdivision to one-half of the assessed land valuation of the district to be reclaimed in case of improvement of rivers, creeks, and streams to prevent overflows; and adding subdivision (d), the construction, maintenance, and operation of public warehouses, to the purposes for which credit might be extended.

SECTION 50.

Thirty-sixth Legislature (*1919*). *Defeated.*

Authorizing the legislature to lend the credit of the state to assist heads of families in acquiring or improving homes; and outlining the procedure in such cases.

SECTION 51.

Twenty-third Legislature (*1893*). *Adopted.*

Authorizing the legislature to appropriate not over $100,000 annually to aid in the establishment and maintenance of a Confederate home.

Twenty-fifth Legislature (*1897*). *Adopted.*

Authorizing aid to certain Confederates who came to Texas prior to January 1, 1880, or to the indigent widows of such soldiers, the maximum appropriation for each to be $8 per month, with a maximum total appropriation in any one year of $250,000; and providing that inmates of the Confederate home shall receive no other aid from the state.

Twenty-eighth Legislature (*1903*). *Adopted.*

Increasing maximum amount of Confederate pensions to $500,000 per year.

Thirtieth Legislature (*1907*). *Defeated.*

Increasing grant to Confederate home to $150,000 per year, from which provision for housing Confederate widows shall be made.

Thirty-first Legislature (*1909*). *Adopted.*

Increasing grant to Confederate home to $150,000 annually.

Thirty-second Legislature (1911). *Adopted.*

Authorizing state ad valorem tax of 5 cents for pensions for indigent soldiers serving in the Confederate Army, frontier organizations, or the state militia, and to the widows of such soldiers; extending pensions to such soldiers whose residence in Texas dates from January 1, 1900; and (inadvertently?) omitting the "public calamity" clause.

Thirty-sixth Legislature (*1919*). *Defeated.*

Increasing pension tax rate to 7 cents; extending provisions to include Confederates in Texas prior to 1910; and restoring the "public calamity" clause.

Thirty-seventh Legislature (*1921*). *Defeated.*

Increasing pension tax rate to 7 cents; extending provisions to include Confederates in Texas prior to 1910; and restoring the "public calamity" clause.

SECTION 52.

Twenty-eighth Legislature (*1903*). *Adopted.*

Permitting political subdivisions of the state to issue bonds and otherwise lend their credit within stated limits for certain public improvements.

Thirty-third Legislature (*1913*). *Never submitted.*

Including public warehouses as an object of credit by political subdivisions, and authorizing the legislature to establish necessary means and agencies for carrying the amendment into effect. This is an extension of part of the amendment listed above as submitted by this legislature (Sections 49, 52).

Thirty-fourth Legislature (*1915*). *Defeated.*

Permitting reclamation districts to issue bonds up to 50 per cent of assessed real property valuation, and providing for payment by a tax not to exceed 50 cents.

ARTICLE IV

EXECUTIVE DEPARTMENT

SECTIONS 5, 17.

Thirtieth Legislature (*1907*). *Defeated.*

5. Increasing governor's salary to $8,000.

17. Providing for an annual salary of $2,500 for the lieutenant-governor.

SECTION 5.

Thirty-sixth Legislature (*1919*). *Defeated.*

Increasing governor's salary from $4,000 to $10,000.

SECTIONS 5, 21–23.

Thirty-seventh Legislature (*1921*). *Defeated.*

5. Increasing governor's salary to $8,000.

21. Increasing salary of secretary of state to $5,000.

22. Increasing salary of attorney-general to $7,500 and eliminating provision for part payment in fees.

23. Increasing salaries of comptroller of public accounts, treasurer, commissioner of the general land office to $5,000 each.

ADD SECTION 27.

Thirtieth Legislature (*1907*). *Defeated.*

Giving constitutional status to a department of agriculture with a bureau of labor.

ARTICLE V

JUDICIAL DEPARTMENT

SECTIONS 2, 3, 5, 6, 8, 17.

Seventeenth Legislature (*1881*). *Defeated.*

2. Increasing Supreme Court to 7 justices; making provisions for sitting in two divisions; and increasing salary from $3,550 to $3,600.

3. Giving Supreme Court appellate jurisdiction over county court cases; and giving the legislature power to authorize the issuance of certain writs.

5. Increasing salary of judges of Court of Appeals from $3,550 to $3,600; and giving governor power to fill vacancies.

6. Taking away civil jurisdiction of Court of Appeals.

8. Transferring cases filed in Court of Appeals over which Supreme Court has jurisdiction; giving district court appellate jurisdiction over county commissioners' court; and giving district court original jurisdiction over all cases not otherwise provided for.

17. Changing minimum number of terms of county court from six to four each year; and making certain procedural changes.

ADD SECTION 29.

Eighteenth Legislature (*1883*). *Adopted.*

Providing for at least four terms of the county court per year for both civil and criminal business as provided by the legislature or the county commissioners' court; and permitting the legisla-

ture to determine how prosecutions may be commenced. (The first part of the amendment corresponds to that proposed to Section 17 of the same article by the Seventeenth Legislature, and defeated.)

ENTIRE ARTICLE.

Twentieth Legislature (1887). Defeated.

Entirely new article of 35 sections.

SECTIONS 1–8, 11, 12, 16, 25, 28.

Twenty-second Legislature (1891). Adopted.

Present system.

SECTION 7.

Thirty-third Legislature (1913). Defeated.

Authorizing more than one judge in a district; raising qualifications for district judge from 4 to 6 years practice; authorizing salary of $3,000 until changed by law; and leaving terms of court to be prescribed by law.

SECTION 18.

Thirtieth Legislature (1907). Defeated.

Permitting legislature to provide by law for all subsequent divisions of counties into commissioners' precincts; and increasing the maximum number of justice precincts from 8 to 12.

SECTION 2.

Thirty-fourth Legislature (1915). Defeated.

Increasing court to five judges; and providing for a salary of $5,000 per year until changed by law.

ARTICLE VI

SUFFRAGE

SECTION 2.

Twenty-fourth Legislature (1895). Adopted.

Requiring declaration of intention of foreigner to be filed at least 6 months prior to election to enable him to vote in that election.

Twenty-seventh Legislature (1901). Adopted.

Requiring all voters subject to payment of poll tax to pay such tax as a condition precedent to voting.

Thirty-fourth Legislature (1915). Defeated.

Permitting voters absent from home precinct to vote in another precinct on state issues and officers under certain conditions.

Thirty-sixth Legislature (*1919*). *Adopted.*

Granting equal suffrage to men and women and declaring all existing suffrage laws to apply equally to both.

Thirty-seventh Legislature (*1921*). *Adopted.*

Permitting only citizens to vote; allowing either husband or wife to pay the poll tax of the other, and permitting the legislature to authorize absentee voting.

SECTION 4.

Twentieth Legislature (*1887*). *Defeated.*

Authorizing the legislature to provide for the registration of all voters in all cities of 10,000 and over and in counties where deemed advisable.

Twenty-second Legislature (*1891*). *Adopted.*

Authorizing the legislature to provide for the registration of all voters in all cities of over 10,000.

ARTICLE VII

EDUCATION

SECTION 3.

Eighteenth Legislature (*1883*). *Adopted.*

Authorizing an additional 20 cents ad valorem school tax; empowering the legislature to create districts by general or special law without local notice; and to authorize an additional 20 cent tax within the school district, provided two-thirds of the tax-paying voters of the district vote the tax, the local 20 cent limit not to apply to incorporated cities and towns constituting independent school districts.

Thirtieth Legislature (*1907*). *Adopted.*

Increasing tax limit of school districts to 50 cents.

Thirty-first Legislature (*1909*). *Adopted.*

Specifically permitting school districts to embrace parts of two or more counties; and authorizing the legislature to pass laws governing school district taxes and the management of schools.

Thirty-fourth Legislature (*1915*). *Defeated.*

Permitting the legislature to authorize a 50 cent county ad valorem tax for the maintenance of county schools; and increasing the maximum school district tax from 50 cents to $1.00.

Thirty-fifth Legislature (*1917*). *Adopted.*

Increasing maximum school ad valorem tax from 20 cents to 35 cents; providing that board of education shall set aside funds for free text books; and authorizing appropriations from general funds in case the limit of taxation is insufficient.

Thirty-sixth Legislature (1919). Adopted.

Increasing the school district tax limit to one dollar; and extending the exemption from the one dollar tax limit to independent and common school districts created by general or special law.

ADD SECTION 3a.

Thirty-first Legislature (1909). Adopted.

Validating the incorporation of school districts and of their bonded indebtedness.

ADD SECTION 3b.

Thirty-fourth Legislature (1915). Defeated.

Authorizing the county commissioners' court upon a majority vote of the qualified voters of the county to establish a fund to aid students in graduating from county public schools and in continuing their education in any state institutions of higher education; and permitting the legislature to authorize the levy of a 20 cent tax for this purpose subject to a similar vote.

SECTIONS 4, 6.

Eighteenth Legislature (1883). Adopted.

4. Permitting the investment of proceeds of public school land sales in securities other than state and United States bonds, the state being responsible for all such investments.

6. Permitting counties to invest the proceeds of sale of school lands in securities other than state and United States bonds, the county being responsible for all such investments.

SECTION 4.

Twenty-fourth Legislature (1895). Defeated.

Permitting the investment of school funds in agricultural lands for the benefit of the state prison system.

SECTION 5.

Twenty-second Legislature (1891). Adopted.

Authorizing the legislature to add annually to the available school fund one per cent of the total value of the permanent school fund.

SECTIONS 10–15.

Thirty-fourth Legislature (1915). Defeated.

10. Permanently locating the University of Texas in Travis County; and authorizing the legislature to provide for its development, maintenance, and permanent improvement.

11. Defining University of Texas permanent and available funds.

12. Making A. and M. an independent college having control of Prairie View Normal and permanently locating the former in Brazos County; authorizing the legislature to provide for its development, maintenance and permanent improvement; and providing for the establishment of junior agricultural colleges.

13. Dividing University lands between the schools.

14. Defining A. and M. permanent and available funds.

15. Recognizing the College of Industrial Arts as an independent college located at Denton; and authorizing the legislature to make necessary provisions to develop it into a first-class college for the education of white girls.

Thirty-sixth Legislature (*1919*). *Defeated.*

10. Separating the state institutions for higher education.

11. Dividing the University permanent fund between the University of Texas and A. and M., 66⅔ per cent to the former and 33⅓ per cent to the latter; and permitting the governing boards to be authorized to issue bonds for permanent improvements, based upon such permanent funds.

12. Providing for the disposition of University and A. and M. funds.

13. Authorizing legislative support for the institutions of higher education.

14. Directing the legislature to make provision for the activities of the University, A. and M., and the College of Industrial Arts.

15. Making Prairie View Normal a branch of A. and M.; and providing for its participation in the proceeds of the A. and M. permanent fund.

SECTION 11.

Twentieth Legislature (*1887*). *Defeated.*

Permitting the investment of the permanent University fund in securities other than state and United States bonds, the state to be responsible for all such investments.

ARTICLE VIII

TAXATION AND REVENUE

SECTION 2.

Twenty-ninth Legislature (*1905*). *Adopted.*

Exempting endowment funds of institutions of learning and religion when invested in bonds and mortgages, and for two years after purchase, property bought by such institutions under foreclosure to protect bonds and mortgages.

SECTION 9.

Eighteenth Legislature (1883). Adopted.

Lowering state maximum from 50 cents to 35 cents; and changing the maximum county, city and town tax from one-half of state tax (purpose unspecified) to 25 cents for city and county purposes; 15 cents for roads and bridges, and 25 cents for permanent improvements.

Twenty-first Legislature (1889). Adopted.

Authorizing the legislature to provide an additional 15 cent county road tax when voted by two-thirds of the property tax paying voters of the county, and giving the legislature power to pass local laws for road maintenance without local notice.

Twenty-ninth Legislature (1905). Adopted.

Authorizing county, city and town tax of 15 cents for jurors.

Thirtieth Legislature (1907). Defeated.

Providing for the creation of improvement districts in cities of more than 5,000 inhabitants with power to build sidewalks at the cost of abutting owners; and to build sewers and pave streets, charging one-third of the cost to abutting property on either side of streets; and constituting such charge a tax and a lien.

Thirty-fourth Legislature (1915). Defeated.

Permitting the legislature to authorize counties and political subdivisions of counties to levy a 50 cent road tax; and increasing the maximum tax for permanent improvements to be levied by counties, cities, and towns from 15 cents to $1.00.

Thirty-sixth Legislature (1919). Defeated.

Authorizing an increase of the county, city, and town tax from 15 cents to 30 cents for roads and bridges, from 25 cents to 35 cents for city or county purposes, and from 25 cents to 50 cents for public works, and authorizing a special road tax of 60 cents.

ADD SECTION 9a.

Thirtieth Legislature (1907). Defeated.

Authorizing counties and their subdivisions to levy a 30 cent road and bridge tax or to issue bonds not exceeding 20 per cent of assessed values for roads and bridges.

SECTION 12.

Twentieth Legislature (1887). Defeated.

Authorizing the legislature to provide for state and county taxation in unorganized counties, provided that there be no assessments for public improvements in the organized counties to which they are attached for judicial purposes.

ADD SECTION 19.

Sixteenth Legislature (*1879*). *Adopted.*

Exempting farm products in hands of producer and family supplies for home and farm use from all taxation until otherwise directed by a two-thirds vote of all members of both houses of the legislature.

ADD SECTION 20.

Twenty-fifth Legislature (*1895*). *Defeated.*

Authorizing the creation of irrigation districts in West Texas; outlining the powers of such districts; and providing for the immediate operation of the amendment.

Twenty-sixth Legislature (*1899*). *Defeated.*

Authorizing irrigation districts in Archer, Baylor, Clay, Wichita and Knox counties; and providing certain taxing powers.

ARTICLE X

RAILROADS

SECTION 2.

Twenty-first Legislature (*1889*). *Adopted.*

Authorizing the legislature to provide means and agencies for the regulation of railroads.

ARTICLE XI

MUNICIPAL CORPORATIONS

SECTION 3.

Twenty-fifth Legislature (*1897*). *Defeated.*

Authorizing the issuance of county bonds to aid railroad construction in south and west Texas; authorizing an annual tax of 2 per cent to meet such obligations; and providing means by which authorization might be availed of.

SECTION 4.

Thirty-sixth Legislature (*1919*). *Adopted.*

Increasing authorized tax for cities and towns of less than 5,000 from one-fourth of one per cent to one and one-half per cent of the taxable values.

SECTIONS 4, 5.

Thirty-first Legislature (*1909*). *Adopted.*

4. Of 5,000 or under may be incorporated only by general law.

5. Over 5,000 may be incorporated by special act.

SECTION 5.

Thirty-second Legislature (*1911*). *Adopted.*

Granting home rule, with 2½ per cent tax limit and amendments not more frequently than two years, for cities of over 5,000.

SECTION 7a.

Thirty-third Legislature (*1913*). *Defeated.*

Authorizing Gulf counties to build sea walls and to designate seawall reclamation districts; and granting certain powers and rights.

ADD SECTION 11.

Twenty-fifth Legislature (*1897*). *Defeated.*

Validating certain county bonds issued without compliance with constitutional provision for a sinking fund, in cases where such bonds had been bought for the permanent school fund.

ARTICLE XVI

GENERAL PROVISIONS

SECTION 11.

Twenty-second Legislature (*1891*). *Adopted.*

Making the maximum interest rate 10 per cent and the rate where not specified 6 per cent (reduced from 12 per cent and 8 per cent, respectively).

SECTION 16.

Twenty-eighth Legislature (*1903*). *Adopted.*

Giving legislature power to establish a system of state banks.

SECTION 20.

Twentieth Legislature (*1887*). *Defeated.*

Imposing state-wide prohibition of intoxicating liquors except for medicinal, mechanical, sacramental, and scientific purposes.

Twenty-second Legislature (*1891*). *Adopted.*

Directing legislature to permit county commissioners' court to designate local option areas within the county.

Thirty-second Legislature (*1911*). *Defeated.*

Imposing state-wide prohibition of intoxicating liquors except for medicinal, scientific, and sacramental purposes.

Thirty-sixth Legislature (*1919*). *Adopted.*

Imposing state-wide prohibition of intoxicating liquors except for medicinal, mechanical, scientific, or sacramental purposes; and declaring amendment self-operative.

SECTON 21.

Thirtieth Legislature (*1907*). *Defeated.*

Permitting legislature to regulate all state printing, stationery, paper, and fuel contracts.

SECTION 30.

Twenty-third Legislature (*1893*). *Adopted.*

Giving the railroad commissioners six-year terms, one retiring every two years; and making the members elective.

ADD SECTION 30a.

Thirty-second Legislature (*1911*). *Adopted.*

Giving legislature power to fix six-year terms, one-third retiring every two years, for governing bodies of state educational, eleemosynary, and penal institutions.

ADD SECTION 58.

Thirty-third Legislature (*1913*). *Defeated.*

Providing that all state, district, county, and precint officers be paid by salaries.

SECTION 58.

Thirty-second Legislature (*1911*). *Adopted.*

Creating a board of prison commissioners of three members appointed by governor with consent of senate for six-year terms, one retiring every two years.

Thirty-seventh Legislature (*1921*). *Defeated.*

Giving the legislature full power to provide for the management and control of the prison system. (Session laws show this authorized as XVII:58. There is no such section.)

ADD SECTION 59.

Thirty-fifth Legislature (*1917*). *Adopted.*

Making the conservation of natural resources a public right and duty; authorizing the legislature to pass necessary laws; and providing for the creation of conservation districts.

ADD SECTION 60.

Thirty-sixth Legislature (*1919*). *Defeated.*

Authorizing the legislature to fix compensation by salary of state, district, county and precinct officers; and authorizing the legislature to make such exceptions as seem advisable.

Thirty-sixth Legislature (*1919*). *Defeated.*

Authorizing the legislature to permit prisoners or their dependents to share in the net profits of the prison system.

ADD NEW SECTION.

Thirty-sixth Legislature (*1919*). *Defeated.*

Authorizing city and county of Galveston each to issue in the aggregate $5,000,000 in bonds for protective works irrespective of other constitutional limits; and imposing certain conditions.

TABLE III

VOTES ON PROPOSED AMENDMENTS TO THE TEXAS CONSTITUTION, 1875-1921.

Legislature Submitting and Date	Section of Constitution to Be Amended	Subject of Amendment	Kind of Election	Vote			Total vote for Governor same or preceding election	Ratio: Vote for Amendment to vote for Governor
				For	Against	Total		
Sixteenth—1879	VIII: add 19	Taxation	Special	(No record; adopted)			237,436	
Seventeenth—1881	V: 2, 3, 5, 6, 8, 17	Judiciary	Special	20,149	36,647	56,796	264,204	21 per cent
	III: 24	Salary Legislators	Special	12,493	44,569	57,062		21 per cent
Eighteenth—1883	VII: 4, 6	School Land	Special	(No record; adopted)			253,726	
	VIII: 9	Taxation	Special	(No record; adopted)				
	VII: 3	School Fund	Special	(No record; adopted)				
	V: add 29	County Court	Special	(No record; adopted)				
Twentieth—1887	XVI: 20	Prohibition	Special	129,270	220,627	349,897	313,300	111 per cent
	III: 24	Salary Legislators	Special	43,690	192,490	236,180		75 per cent
	VII: 11	University of Texas	Special	66,958	165,856	232,814		74 per cent
	VI: 4	Suffrage	Special	81,138	148,525	229,663		73 per cent
	VIII: 12	Taxation	Special	88,179	145,538	233,717		74 per cent
	V	Judiciary	Special	69,577	166,183	235,760		75 per cent
Twenty-first—1889	X: 2	Common Carriers	General	181,954	73,106	255,060	342,409	75 per cent
	VIII: 9	Taxation	General	129,391	71,637	201,028		62 per cent
Twenty-second—1891	VI: 4	Suffrage	Special	59,645	16,815	76,460	342,409	22 per cent
	VII: 5	School Fund	Special	40,526	35,702	76,228		22 per cent
	XVI: 11	Interest Rate	Special	58,797	18,320	77,177		23 per cent
	V: 1-8, 11, 12, 16, 25, 28	Judiciary	Special	37,445	35,695	73,140		21 per cent
	XVI: 20	Local Option	Special	40,344	35,279	75,623		22 per cent
Twenty-third—1893	III: 51	Confederates	General	192,033	79,718	271,751	460,871	59 per cent
	XVI: 30	Railroad Commission	General	221,918	46,358	268,276		58 per cent
Twenty-fourth—1895	VI: 2	Suffrage	General	268,262	51,649	319,911	539,788	60 per cent
	VII: 4	School Fund	General	101,121	188,574	289,695		57 per cent
Twenty-fifth—1897	VIII: add 20	Irrigation District	Special	20,245	55,882	76,127	539,778	14 per cent
	XI: 3	Co. R.R. Aid	Special	14,237	59,579	73,816		14 per cent
	XI: add 11	County Bonds	Special	32,462	42,167	74,629		14 per cent
	III: 24	Salary Legislators	General	35,901	255,121	291,022	607,492	47 per cent
	III: 51	Confed.	Special	56,913	53,074	109,987	539,788	20 per cent
Twenty-sixth—1899	VIII: add 20	Irrigation Districts	General	92,661	147,437	240,098	443,184	54 per cent
Twenty-seventh—1901	VI: 2	Suffrage	General	200,650	107,748	308,398	449,339	64 per cent
Twenty-eighth—1903	III: 52	Extension of Credit	General	66,003	59,373	125,376	280,411	44 per cent
	III: 51	Confed.	General	90,042	42,035	132,077		47 per cent
	XVI: 16	Banks	General	70,056	54,160	124,216		44 per cent
Twenty-ninth—1905	VIII: 2	Taxation	General	58,125	31,674	89,799	183,704	49 per cent
	VIII: 9	Taxation	General	44,936	42,144	87,080		47 per cent
	III: 24	Salary Legislators	General	27,354	55,808	83,162		45 per cent
Thirtieth—1907	III: 51	Confed.	Special	41,079	43,732	84,811	183,704	46 per cent
	VII: 3	Taxation	General	130,402	52,077	182,479	300,764	60 per cent
	IV: add 27	Adm. Organization	Special	19,736	60,733	80,469	183,704	43 per cent
	VIII: add 9a	Taxation	Special	24,539	57,493	82,032		44 per cent
	XVI: 21	Award Contracts	Special	16,043	63,780	79,823		43 per cent
	V: 18	Precincts	General	69,389	74,497	143,868	300,764	48 per cent
	IV: 5, 17	Salary of Governor	General	47,396	112,430	155,826		51 per cent
	III: 24	Salary Legislators	Special	9,517	71,970	81,487	183,704	44 per cent
	VIII: 9	Taxation	Special	18,909	61,208	80,117		43 per cent
Thirty-first—1909	VII: 3	Taxation	Special	48,000	19,076	67,082	300,764	22 per cent
	VII: add 3a	School Districts	Special	52,365	16,430	68,795		23 per cent
	XI: 4, 5	Municipal Corps.	Special	44,990	19,922	64,982		21 per cent
	III: 51	Confed.	General	113,549	28,534	142,083	218,813	65 per cent
Thirty-second—1911	XVI: 20	Prohibition	Special	231,096	237,393	468,489	218,813	210 per cent
	XI: 5	Municipal Corps.	General	119,997	43,088	163,085	299,727	54 per cent
	XVI: 58a	Prison Commission	General					52 per cent

Twenty-fourth—1895	VI: 2	Suffrage	General	268,262	51,649	319,911	539,788	60 per cent
	VII: 4	School Fund	General	101,121	188,574	289,695		57 per cent
Twenty-fifth—1897	VIII: add 20	Irrigation District	Special	20,245	55,882	76,127	539,778	14 per cent
	XI: 3	Co. R.R. Aid	Special	14,237	59,579	73,816		14 per cent
	XI: add 11	County Bonds	Special	32,462	42,167	74,629		14 per cent
	III: 24	Salary Legislators	General	35,901	255,121	291,022	607,492	47 per cent
	III: 51	Confed.	Special	56,913	53,074	109,987	539,788	20 per cent
Twenty-sixth—1899	VIII: add 20	Irrigation Districts	General	92,661	147,437	240,098	443,184	54 per cent
Twenty-seventh—1901	VI: 2	Suffrage	General	200,650	107,748	308,398	449,339	64 per cent
Twenty-eighth—1903	III: 52	Extension of Credit	General	66,003	59,373	125,376	280,411	44 per cent
	III: 51	Confed.	General	90,042	42,035	132,077		47 per cent
	XVI: 16	Banks	General	70,056	54,160	124,216		44 per cent
Twenty-ninth—1905	VIII: 2	Taxation	General	58,125	31,674	89,799	183,704	49 per cent
	VIII: 9	Taxation	General	44,936	42,144	87,080		47 per cent
	III: 24	Salary Legislators	General	27,354	55,808	83,162		45 per cent
Thirtieth—1907	III: 51	Confed.	Special	41,079	43,732	84,811	183,704	46 per cent
	VII: 3	Taxation	General	130,402	52,077	182,479	300,764	60 per cent
	IV: add 27	Adm. Organization	Special	19,736	60,733	80,469	183,704	43 per cent
	VIII: add 9a	Taxation	Special	24,539	57,493	82,032		44 per cent
	XVI: 21	Award Contracts	Special	16,043	63,780	79,823		43 per cent
	V: 18	Precincts	General	69,389	74,497	143,868	300,764	48 per cent
	IV: 5, 17	Salary of Governor	General	47,396	112,430	155,826		51 per cent
	III: 24	Salary Legislators	Special	9,517	71,970	81,487	183,704	44 per cent
	VIII: 9	Taxation	Special	18,909	61,208	80,117		43 per cent
Thirty-first—1909	VII: 3	Taxation	Special	48,000	19,076	67,082	300,764	22 per cent
	VII: add 3a	School Districts	Special	52,365	16,430	68,795		23 per cent
	XI: 4, 5	Municipal Corps.	Special	44,990	19,922	64,982		21 per cent
	III: 51	Confed.	General	113,549	28,534	142,083	218,813	65 per cent
Thirty-second—1911	XVI: 20	Prohibition	Special	231,096	237,393	468,489	218,813	210 per cent
	XI: 5	Municipal Corps.	General	119,997	43,088	163,085	299,737	54 per cent
	XVI: 58a	Prison Commission	General	90,519	70,093	160,612		53 per cent
	XVI: add 30a	Term of office	General	108,230	43,670	151,900		50 per cent
	III: 51	Confed.	General	135,864	41,875	177,739		59 per cent
Thirty-third—1913	III: 49, 52	Extension of Credit	Special	19,745	120,734	140,479	299,737	47 per cent
	XVI: add 59	Salaries all Officials	Special	29,367	108,254	137,621		46 per cent
	V: 7	Judiciary	Special	25,329	112,548	137,877		46 per cent
	III: 24	Salary Legislators	General	37,296	89,535	126,831	214,709	59 per cent
	III: 52	Extension of Credit	Special	Never submitted				
	III: 1	Initiative and Ref.	General	62,371	66,785	129,156		60 per cent
	XI: add 7a	Sea Walls	General	47,259	78,118	125,377		58 per cent
Thirty-fourth—1915	V: 2	Supreme Court	Special	30,957	98,979	129,936		60 per cent
	III: 52	Extension of Credit	Special	32,772	97,546	128,318		59 per cent
	VIII: 9	Taxation	Special	37,861	93,063	130,924		60 per cent
	VII: add 3b	Taxation	Special	27,529	102,627	130,156		60 per cent
	VII: 3	Taxation	General	122,040	129,139	251,179	363,565	69 per cent
	VI: 2	Suffrage	Special	42,690	90,994	133,684	214,709	62 per cent
	VII: 10-15	Institutions Higher Ed	Special	50,398	81,658	132,065		61 per cent
Thirty-fifth—1917	XVI: add 59	Conser. Dist.	Special	49,116	36,827	85,943	363,565	24 per cent
	I: 10	Crim. Pro.	General	79,038	40,592	119,630	177,355	69 per cent
	VII: 3	Taxation	General	86,788	38,616	125,304		71 per cent

	VII: add 35	Taxation	Special	27,529	102,627	130,156		60 per cent
	VII: 3	Taxation	General	122,040	129,139	251,179	363,565	69 per cent
	VI: 2	Suffrage	Special	42,690	90,994	133,684	214,709	62 per cent
	VII: 10-15	Institutions Higher Ed	Special	50,398	81,658	132,065		61 per cent
Thirty-fifth—1917	XVI: add 59	Conser. Dist.	Special	49,116	36,827	85,943	363,565	24 per cent
	I: 10	Crim. Pro.	General	79,038	40,592	119,630	177,355	69 per cent
	VII: 3	Taxation	General	86,788	38,616	125,304		71 per cent
Thirty-sixth—1919	XVI: 20	Prohibition	Special	159,723	140,099	299,822	177,355	169 per cent
	III: 50	Extension of Credit	Special	152,422	153,243	305,665		173 per cent
	IV: 5	Salary of Governor	Special	108,536	193,359	301,885		171 per cent
	III: 49	Roads	Special	29,844	84,518	114,362		64 per cent
	XI: 4	Taxation	General	173,920	146,031	319,951	400,662	80 per cent
	XVI: add section	Bonds of Galveston	Special	51,657	54,678	106,335	177,355	60 per cent
	XVI: add 60	Salaries all Officials	General	149,324	164,603	313,921	400,662	79 per cent
	VII: 10-15	Institutions Higher Ed	Special	37,560	76,422	113,982	177,355	64 per cent
	III: 51	Confed.	Special	56,886	59,701	116,587		66 per cent
	VII: 3	Taxation	General	221,223	126,282	347,405	400,662	87 per cent
	XVI: add 60	Penitentiary System.	Special	42,358	70,911	113,269	177,355	64 per cent
	VIII: 9	Taxation	Special	30,214	83,285	113,499		64 per cent
	VI: 2	Suffrage	Special	141,773	166,893	308,666		175 per cent
Thirty-seventh—1921	VI: 2	Suffrage	Special	57,622	53,910	111,532	482,702	23 per cent
	IV: 5, 21-23	Salary of Governor	Special	25,778	68,223	94,001		19 per cent
	III: 51	Confed.	Special	49,852	61,568	111,420		23 per cent
	XVI: 58	Prison System	Special	39,659	71,880	111,539		23 per cent
	III: 4	Salaries Legislators	Special	24,424	85,482	109,906		22 per cent

Notes from Arkansas

PREPARED BY DAVID Y. THOMAS
University of Arkansas

The first law passed under the initiative process was a child labor law (1915). Since then the Terry Dairy Company employed one Nally, a boy under fourteen, to drive one of its wagons and while in the employ of the company the boy fell off the wagon and was injured. Although decisions had been rendered in other states upholding such laws the dairy company, when sued for damages, attacked the constitutionality of the law as interfering with the freedom of contract, but the supreme court upheld it as a valid exercise of the police power. The court also held that, as the employment of a child under fourteen was negligence *per se*, the defense could not set up the plea of assumption of risk or contributory negligence or the negligence of a third party (street car motorman). The final defense offered by the defendant was that the child had misrepresented his age at the time of employment. On this the court ruled that the right of the child to maintain an action for injuries under the statute was not affected by the fact that he had obtained employment by misrepresenting his age and then, curiously enough, reversed the decision of the lower court in favor of the plaintiff on the ground that the court had not allowed the defendant to prove that the child had represented that he was sixteen at the time of employment. Terry Dairy Company v. Nally, 146 Arkansas, 448-461.

The legislature of 1921 passed a law requiring retailers of "gasoline, kerosene, or other products used by purchasers in the propelling of motor vehicles using combustible type of engines over the highways of the state" to collect a tax of one cent a gallon, one-half to go to the state highway fund, the other half to the county general fund.

The constitutionality of this law was tested in the courts, the plaintiffs relying chiefly on the plea that this was a second tax on gasoline, which had already been taxed once along with other property. However, the court overruled

their plea, holding that the tax was only a payment for a license.

In 1920 the State Plant Board issued an order for the destruction of all cedar trees infected with cedar rust within three miles of an apple orchard in order to protect the apple trees from cedar rust. Some owners of cedar trees objected to the destruction of their property in order to protect a different kind of property owned by another, but the supreme court has just upheld the order of the plant board as a valid exercise of police power. In line with this decision pear orchards affected with blight are now being destroyed voluntarily.

Arkansas is one of the states having no workmen's compensation law and here the doctrine of the assumption of risk still holds in some cases. In two cases decided the same year the supreme court upheld the doctrine, but in one case upheld the decision of the lower court for damages on the ground that the injured party knew nothing of the dangerous condition which had been brought about in his absence (Central Coal and Coke Company v. Fitzgerald, 146 Arkansas, 109), but denied damages in the other on the ground that the plaintiff knew the night shift had been blasting down the roof near his place of work and that it was not an uncommon thing for false shots to bring about dangerous conditions (Alix Coal Company v. Nelson, Ibid., 574).

In a decision recently reported in the newspapers the supreme court declared that a trace of negro blood was sufficient to make one a negro in the eyes of the law and upheld the action of a school board in excluding the plaintiff's child, a girl, from the white school.

NOTES FROM OKLAHOMA

PREPARED BY M. H. MERRILL
University of Oklahoma

The summer session of the University of Oklahoma will close July 31. Enrollment this year has reached a mark

of over 2100, 500 in excess of the attendance at any previous summer school.

The statewide mandatory primary for the nomination of party candidates was held on August 1. Mr. J. C. Walton, Mayor of Oklahoma City, was nominated by the Democratic party for the office of Governor. He was opposed by R. H. Wilson, state superintendent of public instruction, and Thomas H. Owen, former member of the Criminal Court of Appeals and of the Supreme Court of the State.

John Fields, who has been prominent in agricultural affairs and is now editor of the Oklahoma Farm Journal, and George Healey, a farmer and stockman of Beaver, are seeking the Republican gubernatorial nomination.

Considerable interest is added to the Democratic contests by the entry of candidates for all nominations bearing the endorsement of the Farmer-Labor Reconstruction League, an organization which is advocating a rather extended program of state ownership and control of industry similar to that proposed by the Non-partisan League in the northern states.

Announcement is made that A. K. Christian, formerly of the University of Texas, will come to the University of Oklahoma this fall as assistant professor of European History.

BOOK REVIEWS

EDITED BY M. W. GRAHAM, JR.
University of Texas

HYDE, CHARLES CHENEY. *International Law as Interpreted and Applied in the United States.* (Boston: Little, Brown and Company, 1922. Pp. lix, 832; xxvii, 925.

An increasing interest in and appreciation of the significance of the subject of international law are indicated by the appearance of new periodicals devoted to this field, by the publication of numerous articles in the law reviews, by the addition or expansion of courses in the law school curricula, and, by the appearance of carefully prepared treatises or monographs and of a new type of textbook. It is to the last of these—the preparation of a textbook and reference work that Professor Hyde has devoted years of research and laborious efforts. The result is a series of volumes which are a notable credit to American legal scholarship.

Students and teachers of international law as well as practicing lawyers in this field have been fortunate in having the comprehensive and authoritative digests of Wheaton and Moore. And in recent years, brief texts or resumés have served as guides to these works and other materials available, but from the standpoint of the law teacher or practitioner there was no reliable guide to the larger treatises, to diplomatic practice and to the accumulated experiences of years in the settlement of international controversies. It is this gap that has been filled by the publication of Professor Hyde's volumes.

The rules governing international relations where such rules have been formulated into law and the international practices which are in process of developing into rules have been rendered more accessible by the publication of these volumes. In their publication a standard has been set which will improve the teaching of this subject and raise the tenor of international practice so far as such practice is slowly being crystallized into law.

The author attempts to give not merely evidence of existing rules of international law but also offers well considered suggestions as to what practices are taking the form of law, or what the law should be. There is throughout a recognition of moral obligations which serve as "a solid reason for the claim that practice should shape itself accordingly and evolve a rule of law." The footnotes are filled not alone with numerous citations but in addition with a resumé of important cases and with a wealth of illustrative extracts and authoritative opinions. Certain subjects as treaty-making and enforcement, the settlement of claims, the practice with respect to passports, and the rights and duties of consuls, are treated in such form as to furnish special contributions to the existing literature in the field.

Though there are few things in the two volumes which seem to be open to criticism, several questions involving perhaps differences in point of view and approach were suggested in the course of the reading of the work. In the first place it is doubtful whether sufficient attention has been given to the features of the German *Kriegsbrauch im Land Kriege* and to the provisions of other war manuals as well as to war practice which in effect involved the negation of all rules relating to war and neutrality. Again is it not possible that too much emphasis has been given to the Hague Conventions and the rules formulated therein with correspondingly too little attention to the process of making rules of war and neutrality, as well as to the development of the necessary steps in their enforcement? Finally, though this treatise is one of the first to approach the subject from the more strictly legal point of view, has the demarcation between the legal and political phases of the subject been made as clear and well-defined as possible? These and similar queries arise as the volumes are read by one interested in the teaching of international law as law. Probably the undeveloped state of the law in this field renders such a separation impracticable in a general work.

University of Texas. CHARLES GROVE HAINES.

BUCK, ARTHUR E. *Budget Making.* (New York: D. Appleton & Co., 1921. Pp. 234.)

The writer of Budget Making is a staff member of the New York Bureau of Municipal Research and of the National Institute of Public Administration. The book is one of a series which these organizations expect to coöperate in producing.

While it is concerned mainly with state budgets, municipal budgets are also referred to. It contains a valuable summary of the practices of the various states in budget making and also of the present statutory requirements of the states in this connection. The author favors the concentration of the budget making responsibility in the hands of the governor. He is not unmindful of the need of a trained staff in the preparation of budget material. He thinks there should be some capable man on the regular staff and that in addition provision should be made by which the governor could employ additional experts to assist in the preparation of the budget. While the book does not give an accounting treatment of the set up and administration of the budget, it has some good accounting analysis on the basis of the classification of items. The author rejects the functional basis of the classification of the items except in so far as this may coincide with a classification on the basis of the administrative units. After the classification is set up on the basis of administrative units the sub-classification under these units should be on the basis of objects, "objects" being used to designate the commodities and services required by the administrative unit. To this general basis he adds the "character" basis under which he sets up the following classes: current expenses and fixed charges, acquisition of property and redemption of debt.

A valuable set of forms is described showing classifications of data on other bases than those already referred to.

There is also good discussion of the form of the appropriation bill and its treatment by the Legislature. He thinks that the appropriation bill for each organization should car-

ry a total for current expenses, a total for fixed charges, and a total for additions to property. However, each of these totals are to be supported by schedules showing the detail according to the main heads of the object classification. (Sup. 147). The following four conditions are to be finally attached to the appropriation bill:

1. The date when and the period for which appropriations are to be available should be specified. Likewise the organization units responsible for the expenditures of the appropriations should be specified. All appropriations should be specified. All appropriations should be available only for the payment of liabilities incurred during the fiscal period for which such appropriations are made and, at the end of this time, any unexpended and unencumbered balances should revert to the treasury. This, of course, will depend upon the constitutional and legal provisions surrounding the government.
2. It should be provided that transfers may be made within the schedules supporting the lump-sum appropriations for current expenses to the various organization units. The schedules should indicate the initial distribution of these appropriations among the different classes of objects (services, commodities, and obligations). Each lump-sum appropriation should be paid out in accordance with the schedule that relates to it, unless and until such schedule is amended. The chief executive should make transfers in the appropriations for current expenses of his own office, and perhaps the legislative body should do the same thing. All other transfers should be made upon a request from the head of the organization unit, which should be approved by the budget-making authority and a copy of it transmitted to the auditor or comptroller before becoming effective. The auditor or comptroller should be required to pay out of the appropriation, or whatever balance may remain, in accordance with the amended schedule. Finally, it should be provided that all transfers and changes in the schedules, made or approved by the budget-making authority, should be reported in the next budget.
3. It should be provided that no person shall be employed whose compensation is to be paid out of the amounts set aside for "personal services" in the schedules under the lump-sum appropriation for current expenses, except in conformity with the standardized list of positions, salaries, and grades as adopted by the budget-making authority or the civil service commission.

4. It should be provided that no contract or agreement shall be entered into for the purchase of supplies, materials, and equipment except in conformity with the standard specifications and regulations established by the budget-making authority or the purchasing agent to govern the purchase of such commodities.

It is quite important to see just how far the author gets away from the rigidity against which he seeks to provide by a system of transfers. In the first place it will be noted that there is a lump-sum appropriation for "personal services" even in the schedule attached to the lump-sum appropriation for current expenses. This seems to escape from the appropriation for particular individuals and particular positions which is now causing so much trouble in the appropriation bills of some educational institutions.

When one reads the four general provisions and particularly number three it does not seem so sure that the desired elasticity has been secured. So far as number three is concerned one would not be sure that the schedule referred to was not attached to the appropriation bill. Reference to the schedule on page 147 and some correspondence with the author reveals the fact that he does not wish the salary schedule to be a part of the appropriation bill. And yet if this list is something in existence at the time of the appropriation and is referred to as authoritative isn't it substantially included in the bill? Perhaps the author would agree that at least in the case of educational institutions the list of salaries should be simply a list showing the range of salaries for the respective ranks of instructor, adjunct professor, associate professor, etc. The majority of legislatures, however, leave even this matter to the governing boards of the state institutions. It would be a grave mistake to make the governor of a state the final authority as to the salaries paid the professors in the University. If this cannot be left in the hands of the governing board of regents or curators then this board is unable to make contracts until an appropriation is made, and is greatly hampered in securing staff for the first year of each biennium.

Even in the case of the civil service commission it would

not be wise for its list of salaries as submitted at the beginning of a biennium to be binding for all positions. There must be some range of salaries for respective positions and it must be possible to vary from the particular estimated item used in getting at the total of the appropriation bill. The author may have had in mind an elastic provision. He has not, however, given a lucid treatment of the matter of elasticity as applied to personal services in an appropriation bill. Perhaps he presupposes wide information as to the usual discretionary powers of a civil service commission. In the absence of such a commission the governor, I presume, must agree to some form of salary schedule. But this schedule can be made so as to give discretion to the governing board or place all discretion in the hands of the governor. It is not clear to me just exactly what the author has substituted for itemization in the case of personal services.

It is to be noted of course that the author does not favor the governor's having power to transfer from the total of *current expenses* to the item of *acquisition of property*. The transfers are to be made from one current expense item to another. For example, a transfer might be made from the "personal services" item to the "supplies and materials" item. So far as this distinction applies to large property items it might work out well. It would not seem proper to transfer from a building appropriation to a current expense operation. There is, however, in all large educational institutions a large amount of office equipment. Much of this equipment lasts from two to five years. It is not customary in state accounting to set up depreciation reserves and replacement funds so that this office equipment can be provided in that way. Moreover, in the field of scientific laboratory equipment, there is constant change. Likewise much of this equipment in the case of educational institutions is purchased in larger or smaller quantities according to the enrollment of students. It isn't unusual for the enrollment of a department to increase fifty per cent when the total enrollment may increase ten per cent or fifteen per

cent. This cannot be foreseen and it affects the total acquisition of property which an institution requires for its purposes. Where you cannot foresee the approximate needs for two years it is not reasonable to set up a rigid item.

While the author of Budget Making has gone much farther on the question of the elasticity of the budget he still seems to emphasize itemization unduly as a protection to the state.

The chief protection to a state as well as to private industry is to be found in the service rendered and the unit cost of such service. A standardized cost system reduced, where possible, to the basis of unit costs is a method of setting up standards of efficiency, which has large responsibilities in governmental administration as elsewhere. The book under review recognizes the value of cost data but pays little attention to it as a basis of legislative control. In his Form B, page 75, the estimated unit costs are called for along with quantities in the preparation of the estimate of current expenses, but actual unit costs in past operations are not called for. While the author might say that these actual costs would be accessible in the operating data the answer to this may be that they are not usually accessible. Moreover, the state institutions are not making an effort to so standardize the accounting classification that unit costs are comparable and valuable. Form B, page 75, would be greatly improved if it carried opposite the actual expenditure column for expense items the actual unit costs. The budget making authority would then be in position to inquire as to the reason for increases per unit in the estimated costs over the unit costs of preceeding periods. The bringing of unit costs into an important position would call for standardized dependable data and there would be a gradual shift to a more reasonable basis of legislative control.

The reviewer believes that Budget Making is a valuable contribution to the literature of management of governmental affairs and also agrees with the author for the most part but believes at the same time that he still over-empha-

sizes the importance of itemization and fails to set forth lucidly a program of elasticity in administration in matters affecting personal services.

University of Texas. SPURGEON BELL.

LIPPMANN, WALTER. *Public Opinion.* (New York: Harcourt, Brace and Company, 1922. Pp. 418.)

Mr. Lippmann's treatment of this, one of the fundamental problems of popular government, is written almost entirely from the psychological point of view. Aside from furnishing him with a vast array of interesting illustrations, his journalistic experience seems to have contributed little to the work save a strong conviction that the press can never play any important part in the formation of true opinion. Being primarily a psychological study, it is to be expected that it will deal rather with the nature of public opinion than with its importance in the affairs of government or its modes of expression. It is the intention of the author, then, to approach this problem from the angle that is all too frequently taken for granted. That it should not be taken for granted is clearly demonstrated by this volume.

The book is exceedingly difficult to summarize; certainly it suffers in the process, for its chief merit is found in the brilliant analysis of the various aspects having to do with the nature of public opinion, rather than the conclusions to which the author comes. The book is divided into eight parts. Part I, the Introduction, has as the title of its single chapter "The World Outside and the Pictures in Our Heads." Here it is pointed out that men really do not behave in "response to the facts of the Great Society" but "in response to what can fairly be called a most inadequate picture of the Great Society." Part II enlarges upon this theme by showing the actual inadequacy of the opportunities afforded the average citizen for securing accurate information of the World Outside, and incidentally of his failure to take advantage of these. Then follow five chapters dealing in a most suggestive manner with the part played by stereotyped ideas, traditional beliefs, and inher-

ited prejudices in determining opinion. Part IV, dealing with "Interests," first describes the methods by which interest is focussed on a given subject and then demonstrates the folly of a complete acceptance of the doctrine of economic interest as affecting the formation of opinion. Part V deals with the methods employed by leaders in the "Making of a Common Will," a section that elaborates Lord Bryce's observation that all governments, whatever their form, are really the rule of a few. The people may go through the motions of assent or dissent, but the leaders, by means of appeal to prejudice, symbols, interests, and the like, effectively control the government. In Part VI, "The Image of Democracy," Mr. Lippmann has written a section that is calculated to leave few illusions about the adequacy of the older democratic theory of the well-nigh omnicompetent citizen—the belief in the idea that man is by nature so political an animal that he is capable of guiding unaided, all the affairs of the state. Part VII deals with "Newspapers." Here he distinguishes between truth and news, and comes to the conclusion that the press cannot be depended upon to present to the people the facts that are essential to the formation of sound opinion. The final part of the book contains Mr. Lippmann's constructive proposals. He advocates the establishment of organized agencies acting as a part of the government, and yet independent of all political control, with the function of "making the unseen facts intelligible to those who have to make the decisions."

In the opinion of the reviewer, the analytical portion of this book is far superior to the last or constructive part. After reading Mr. Lippmann's brilliant treatment of the shortcomings of public opinion, his solution of the problem seems hopelessly inadequate. Not that the measures which he proposes (which to a considerable extent means the extension of agencies and organizations already in operation) will not be valuable. It simply seems inconceivable that such fact-finding agencies could overcome the ever present obstacles in the way of the formation of real public opinion.

And in his last chapter, although he does not despair of the effectiveness of "The Appeal to Reason," the author indicates that he recognizes the great difficulties inherent in the notion of substituting opinions based on facts for those based on prejudice, stereotyped conceptions, and traditional beliefs or codes. So long as the public is interested mainly in sensational and trivial events, the necessarily "dry" reports of such agencies would have little appeal for the mass of the people, who, as the cab driver told Mr. Bryan, form the bulk of the population. However, it seems to be the opinion of the author that it is an "intolerable and unworkable fiction that each of us must acquire a competent opinion about all public affairs." Although he does not make this matter sufficiently clear, Mr. Lippmann seems to hold that greater freedom of action should be granted to the elected representatives of the people; it is for their benefit that the fact-finding agencies will operate in all except a relatively few cases. But how, it may be asked, would such agencies aid us in that most important of all of the functions of the electorate—the selection of their representatives? If greater discretion is to be allowed them, it will be even more important than it now is that able men be selected. And as the selection of these representatives involves decisions on public policies and hence the expression of public opinion, it is evident that the problems of election are also problems of public opinion.

This work is certainly not a final treatment of the subject of public opinion, but it does give us the most suggestive treatment yet produced on the question of the nature of public opinion. As Mr. Lippmann points out, there can be no final chapter to any of the problems of politics—no happy ending in which we view the hero living happily ever after. Therefore there can be no doubt of the fact that a book is thoroughly worth while even if it does not settle the problems with which it deals; it is sufficient that it lead to more careful thinking and writing on these problems. This Mr. Lippmann's book will surely do.

University of Texas. B. F. WRIGHT, JR.

BEARD, CHARLES A. *The Economic Basis of Politics.* (New York: Alfred A. Knopf, 1922. Pp. 99).

Not satisfied with having overthrown many of the notions long held by historians concerning the sources of the political philosophy expressed in the Constitution and in the writings of the Jeffersonian Democrats, Mr. Beard is bent on demonstrating that the motivating power behind all political development is of an economic nature. To this end he shows that such was the opinion of six great political philosophers: Aristotle, Machiavelli, Locke, Madison, Webster, and Calhoun. "They believed that the fundamental factors with which the statesman has to deal are the forms and distribution of property and the sentiments and views arising from the possesion of different degrees of property." Having considered the theorists, he proceeds to point out that in actual fact "the constitutions of government of great nations were, for centuries, deliberately fitted to the division of society into separate orders, groups, and estates, each of which pursued a separate calling and cherished its own sentiments about economic interests." This condition continued almost to our own day, and ceased to exist only after the general acceptance of the doctrine of political equality. This doctrine Mr. Beard believes to be contrary to the actual structure of social and political organization. "The rule of numbers is enthroned," and no regard is paid to the economic interests and motives actuating these numbers; the democratic theory simply ignores, without abolishing, economic classes and inequalities. As a result we have the present day dissatisfaction with representative democracy.

Mr. Beard does not attempt to determine the nature of the state of the future in which this natural division along economics lines will presumably be the basis of political organization. His "grand conclusion" is, he says, that of Madison in the Tenth Federalist: division into (economic) classes is inherent in the nature of man; from these

class groupings come the spirit of faction, and "the regulation of these various and interfering interests forms the principal task of modern legislation." Madison, it will be remembered, while recognizing the inevitability of faction and party, advocated the adoption of the Constitution because of its "tendency to break and control the violence of faction." He was hardly in favor of deliberately basing the organization of the government on clearly recognized lines of class division; rather did he seem to be in favor of curbing or of smoothing over these lines of division. To this extent the Tenth Federalist does not seem to be consistent with the conclusions to which Mr. Beard comes.

The author does not tell us at any point in this well written little book just what he means by the term "basis." He undoubtedly furnishes the evidence necessary to show that economics forms one of the fundamental bases of all well organized governments, but he does not attempt to state to what extent other factors enter in. Consequently the book seems to be open to the objection that the economic forces behind government are given a position of exaggerated importance. He selects the portions of the writings of Aristotle which deal with economics and ignores those dealing with the bearing of other forces, such as psychology, ethics, and religion, on government. In the same way, Machiavelli's whole theory of history, which applies to the development of political organizations, a theory which attributes changes to the influence of great men and of cycles of rise and decline rather than to economic causes, is not mentioned. The effect of opinions derived from religion, political theory, and attachment to leaders as discussed by Madison in the same number of the Federalist is similarly not treated. And while he has much to say of the long period in which the structure of government was, or seemed to be, based mainly on economic class lines, he has nothing to say of that very important era in which, to quote Figgis, "politics was the handmaid of religion."

Thus while Mr. Beard is undoubtedly correct in protesting against the separation of the study of politics into an

air-tight chamber all its own, he seems to lay himself open to the charge that he would have but one other field of knowledge admitted to a place of importance in this sphere of study. And since the explosion of the economic man myth it has become increasingly clear that men are actuated by other than economic motives in their determination of political problems, and if we are to attempt to solve the problems of politics we must consider every field of knowledge which bears upon these problems.

It is both interesting and significant that Mr. Beard, like Mr. Lippmann, express a growing dissatisfaction with the present form of representative government, and yet has no faith in the panaceas offered by the various socialistic and communistic schools of thought. It is to be hoped that he will at no very distant date give us a book setting forth his conception of what is to supplant our present system of representation.

University of Texas. B. F. WRIGHT, JR.

BRUNET, RENE. *The German Constitution.* (New York: Alfred A. Knopf, 1922. Pp. 339).

This is easily the most thorough study of the political transition in Germany that has been made. The book is divided into six chapters of good proportions, the most important of which are those relating to Parliamentary Government, Fundamental Rights or Duties of German Citizens, and the economic and social constitution.

This volume is interesting because it is a Frenchman's analysis of the transformation of the old Germany, the traditional enemy of France. It is satisfying also because, as is characterstic of the French mind, it is a penetrating philosophy of government as well as an exposition of the essential facts of the German system. One entirely too predominating characteristic of American text-books on government has been their historical character. Some have been almost encyclopedias. Too many government books have been written by historians who tried to change to political scientists. The result has been that students of gov-

ernment have derived very little sense of the philosophy of things from their study of government. It is a real tonic to discover occasionally a writer that makes a proper division between history and government.

Some of the more illuminating features emphasized by this timely volume are: German federalism, legislative supremacy rather than judicial review, the relation of the economic and political life of society, class struggle that the new order reflects, and the effort to break down the political hegemony of Prussia.

University of Texas. C. P. PATTERSON.

KAWAKAMI, K. K. *Japan's Pacific Policy.* (New York: E. P. Dutton & Co., 1922. Pp. 380).

This is an eminently fair statement of the problems of the Pacific by an author who is a recognized authority in world politics. There are a great many comparisons made from the practice of the leading nations in the game of imperialism that are rather keen in their suggestiveness, especially to Americans and Englishmen who are inclined to think of the white man's burden as benevolence, charity or Christianity. It clearly, but politely, shows Americans that a nation that promulgates the Monroe Doctrine and builds a Carribean policy as a corrallary of this doctrine, promotes secession in Central America as a means to taking the Panama Canal Zone from a helpless sister power, demands the Open Door from other people and builds a protective tariff around her home markets, can honestly have very little to say about Japan's position in the East.

When one compares what England has done to protect India in all of its ramifications and what the United States has done in building up a doctrine that has made all of Latin-America a set of protectorates with what Japan has been forced to do in the East by virtue of European aggression and Chinese weakness, he must confess that the policies of these three nations could well have been made by the same statesman without changing his model.

The author has much to criticise in his own country and

its methods. He regrets that Japan did not play a positive role in the Washington Conference by taking the initiative and proposing a program for the East. He is optimistic for the future of Japan and believes she will faithfully execute her promises made in the Washington Conference. This book gives the best analysis of the situation of the Far East that has come from the press.

University of Texas. C. P. PATTERSON.

BARUCH, BERNARD M. *The Making of the Reparation and Economic Sections of the Treaty.* (New York and London: Harper & Bros., 1922. Pp. 352).

This is an account of the inside workings of the Peace Conference on the economic phases of the treaty by a member of the various commissions that dealt with these matters. The proposals of the various national commissions are given, the compromises that were made, the positions taken by the various national groups in the process of these settlements. The author shows that the American commission was usually more reasonable in its demands than the others and that Woodrow Wilson was able in many instances to persuade the other commissions to modify their demands. The author feels that the American interests were well protected at the conference.

The impression is made that the treaty was the best possible under the circumstances, but that this does not mean that it should not be modified. The merits of the treaty can be shown only by its enforcement with proper readjustments. The book is a sane, conservative and critical discussion of this much mooted question, and will be very helpful in clarifying portions of the Versailles treaty.

The reparation and economic clauses are quoted and marginal explanatory notes made for the guidance of the reader. There are an additional fifty-six pages of addresses on problems connected with the economic and reparation provisions of the treaty.

University of Texas. C. P. PATTERSON.

KEYNES, JOHN MAYNARD. *A Revision of the Treaty.* (New York: Harcourt, Brace & Company, 1922. Pp. vii, 242.)

This is a sequel to Mr. Keynes's former volume on "The Economic Consequences of the Treaty" and is in the main a coroboration of the author's first position. He regards the present ills of Europe mainly due to the almost iniquitous provisions of the treaty and that its revision is imperatively necessary in the interest of justice and humanity. The author feels the wickedness of the European situation, especially the reparation problem, so keenly that his book is almost poisonous to a student who is trying to obtain a balanced attitude toward the work of the allies in the Paris Conference.

The author presents a very keen analysis of the economic and reparation clauses with the result that the French demands appear absurd. The author's discussion is convincing, but a more conservative criticism would probably have left less doubt, in the reader's mind, of the truth of the author's thesis. There are thirty-six pages of valuable documents in the appendix.

University of Texas. C. P. PATTERSON.

VANDERLIP, FRANK A. *What Next in Europe?* (New York: Harcourt, Brace and Co., 1922. Pp. vi, 308.)

This book like all Gaul is divided into three parts: The Background, Economic Chaos, and Reconstruction. The author visited fifteen countries and held conferences with their leading statesmen and financiers. The information thus gained combined with his experience and observation constitutes the basis of his discussions.

The book primarily deals with the economic situation in Europe. The chief difficulties in this problem are considered to be inflation, the German indemnity and the Allies' debts. The far reaching influences of inflation are clearly and forcibly depicted. The author thinks Austria and Poland outside of Russia are in the most hopeless condition while Italy is recovering more rapidly than the other European powers.

The League of Nations is regarded as one of the major forces of reconstruction in efforts at more cordial international comity among the European powers, as a *sina qua non* to financial and political readjustment. International traffic and exchange will as they are regarded as general European problems become agencies of reconstruction. The German indemnity will, in the opinion of the author, have to be modified and should be done by the European powers on their own initiative rather than on a basis of cancellation of their debts by the United States.

The author's specific proposal for the economic plight of Europe is a Federal Reserve Bank of the United States and Europe as a "Super Corporation" with a capital of gold to be subscribed by Americans and Europeans. This institution would be governed by a court of Trustees consisting of five Americans and four Europeans. This bank would have branches in the various European states, and would in the author's mind be able to stablize and reconstruct the European currency systems. This proposal, of course, is based upon the American Federal Reserve system, and undoubtedly would, if instituted, prove a valuable aid in the solution of the European exchange problem.

Vanderlip's diagnosis of Europe and his prescriptions for her ills are probably the most scientific of the many that have been made. They are certainly interesting and appear sensible to understand. Anyone attempting to understand the European muddle should read this work.

University of Texas. C. P. PATTERSON.

EAGLE, EDWARD E. *The Hope of the Future.* (Boston: The Cornhill Publishing Co., 1922. Pp. 141.)

This book in the main is a description of the British Empire. It was written by an American who spent five years in gathering the information that he is anxious for his fellow countrymen to have. The Hope of the Future, as he sees it, is the solidarity of the English speaking groups, and it is his aim to promote a better understanding of these groups and their institutions. His method is primarily to

show the virtues of the English and the vices of the Americans. This may be the proper method to bring Americans to a realization that their English cousins are not so bad and that they themselves are living in glass houses, but it at least is not scientific. The book is valuable, however, as a study of Anglo-American relations.

The book is really a series of sermonetts on a good many topics that are not very closely related. From the selling of goods abroad and difficulties of a democracy, the author passes to the chapter headed "The Golden Calfe," in which he becomes a sort of "Billy" Sunday, and warns the American that their worship of materialism is making them a sordid and vulgar people. The book, while it is gossipy and scrappy, has some merits.

University of Texas. C. P. PATTERSON.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,

Of Southwestern Political Science Quarterly published quarterly at Austin, Texas, for April 1, 1922,

State of Texas.
County of Travis.

Before me, a notary public in and for the State and County aforesaid, personally appeared Herman G. James, who, having been duly sworn according to law, deposes and says that he is the editor of the of the Southwestern Political Science Quarterly and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher, Southwestern Political Science Association, Austin, Texas.

Editor, Herman G. James, Austin, Texas.

Managing Editor, Herman G. James, Austin, Texas.

Business Managers, none.

2. That the owners are: (Give names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock.)

Southwestern Political Science Association, an unincorporated association.

The officers of the Southwestern Political Science Association are: C. B. Ames, President, and Frank M. Stewart, Secretary-Treasurer.

3. That the known bondholders, mortgages, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.)

None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other th an that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

HERMAN G. JAMES.

Sworn to and subscribed before me this 30th day of March, 1922.

E. R. CORNWELL.
(My commission expires May 30, 1923.)